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FIFTIETH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1985

COMPLETED

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FOR THE FISCAL YEAR

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1985

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[1] Term expired 27 August 1985.
[2] Appointment effective 28 May 1985.
[3] Appointment effective 1 July 1985.

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., June 3, 1988

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Fiftieth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1985.

Respectfully submitted,

JAMES M. STEPHENS, *Chairman*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, D.C.

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I

Operations in Fiscal Year 1985

A. Summary

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only on those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—employees, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 1985, 41,175 cases were received by the Board.

The public filed 32,685 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected hundreds of thousands of employees. The NLRB during the year also received 8,129 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers. Also, the public filed 361 amendment to certification and unit clarification cases.

After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

At the end of fiscal year 1985, the five-member Board was composed of Chairman Donald L. Dotson and Members Patricia Diaz Dennis, Wilford W. Johansen, and Marshall B. Babson; one seat was vacant. Rosemary M. Collyer served as the General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1985 include:

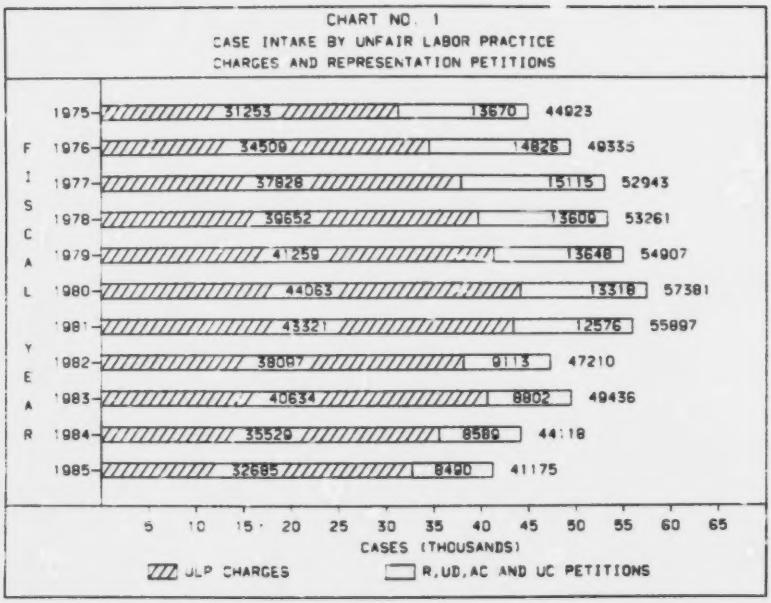
- The NLRB conducted 4,614 conclusive representation elections among some 224,116 employee voters, with workers choosing labor unions as their bargaining agents in 42.4 percent of the elections.
- Although the Agency closed 42,328 cases, 19,284 cases were pending in all stages of processing at the end of the fiscal year. The closings included 33,946 cases involving unfair labor practice charges and 7,807 cases affecting employee representation.

• Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9,783.

• The amount of $39,858,351 in reimbursements to employees illegally discharged or otherwise discriminated against in violation of their organizational rights was obtained by the NLRB from employers and unions. This total was for lost earnings, fees, dues, and fines. The NLRB obtained 10,905 offers of job reinstatements, with 9,956 acceptances.

• Acting upon the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 3,638 complaints, setting the cases for hearing.

• NLRB's corps of administrative law judges issued 880 decisions.



NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

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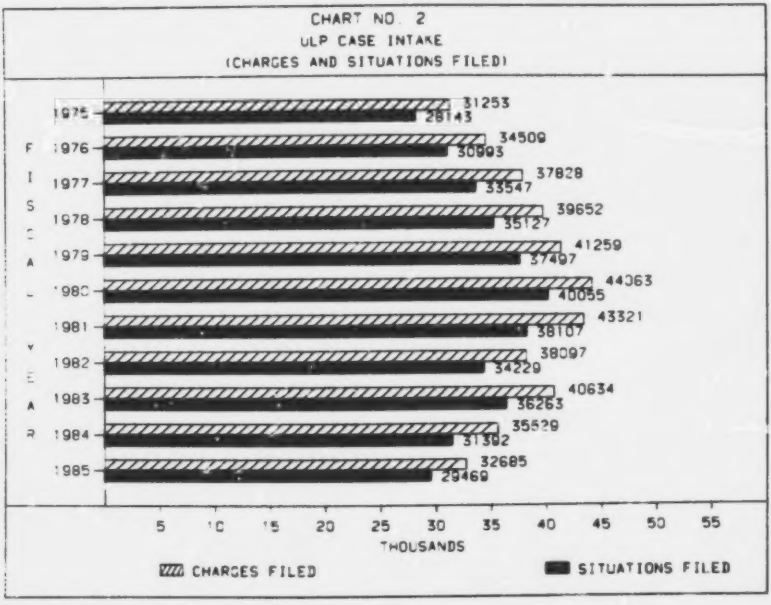
Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees concerning whether they wish to be represented by a union in dealing with their employers and, if so, by which union, and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.



The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1985.

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The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practices and election petitions, the NLRB is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of secret-ballot employee elections.

The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases leading to Board decision, and has general supervision of the NLRB's nationwide network of field offices.

For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders become orders of the Board.

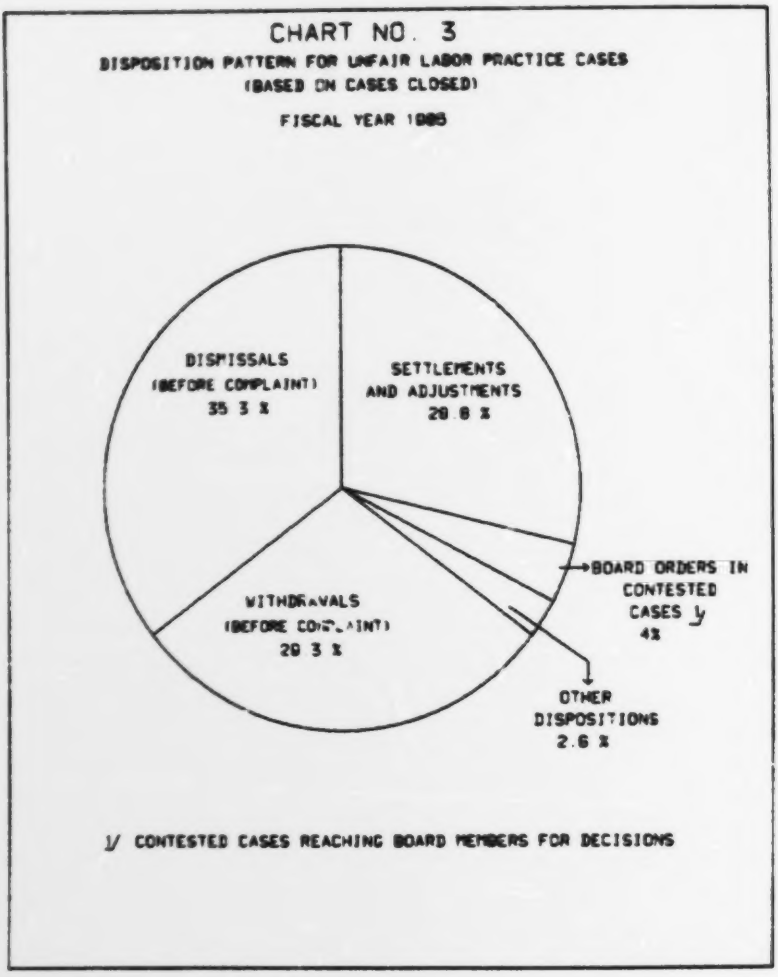
All cases coming to the NLRB begin their processing in the Regional Offices. Regional Directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining purposes, to conduct elections, and to pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.

B. Operational Highlights

1. Unfair Labor Practices

Charges that business firms, labor organizations, or both have committed unfair labor practices are filed with the National Labor Relations Board at its field offices nationwide by employees, unions, and employers. These cases provide a major segment of the NLRB workload.

Following their filing, charges are investigated by the Regional professional staff to determine whether there is a reasonable cause to believe that the Act has been violated. If such cause is



not found, the Regional Director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, the Regional Director seeks voluntary settlement or adjustment by the parties to the case to remedy the apparent violation; however, if settlement efforts fail, the case goes to hearing before an NLRB administrative law judge and, lacking settlement at later stages, on to decision by the five-member Board.

More than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 40 days without the necessity of formal litigation before the Board. Only about 2 percent of the cases go through to Board decision.

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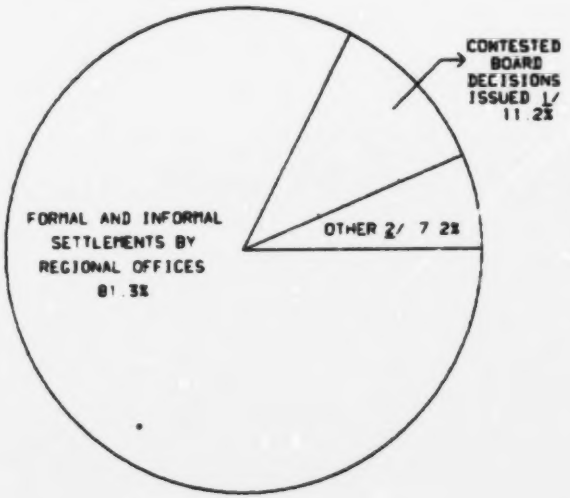
CHART NO. 3A

DISPOSITION PATTERN FOR MERITORIOUS UNFAIR LABOR PRACTICE CASES (BASED ON CASES CLOSED)

FISCAL YEAR 1985



1/ FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING

2/ COMPLIANCE WITH ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING

In fiscal year 1985, 32,685 unfair labor practice charges were filed with the NLRB, a decrease of 8 percent from the 35,529 filed in fiscal 1984. In situations in which related charges are counted as a single unit, there was a 6-percent decrease from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 22,545 cases, about 9 percent less than the 24,852 of 1984. Charges against unions decreased 7 percent to 10,093 from 10,884 in 1984.

There were 47 charges of violation of section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

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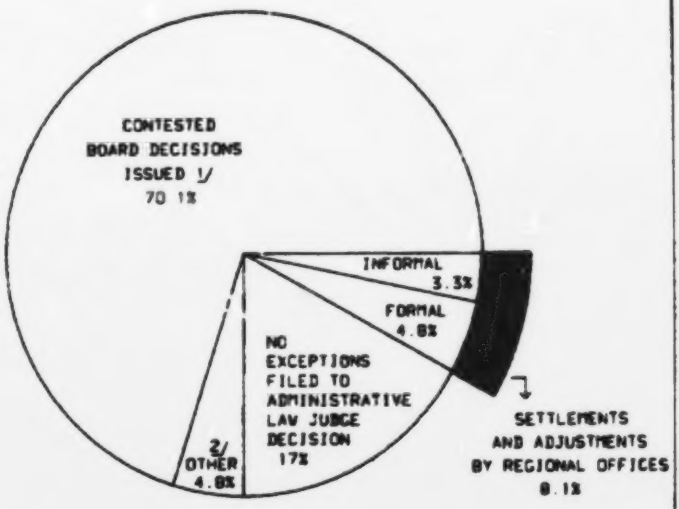
CHART NO. 3B

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL (BASED ON CASES CLOSED)

FISCAL YEAR 1985


CONTESTED BOARD DECISIONS ISSUED 1/ 70.1%
INFORMAL 3.3%
FORMAL 4.8%
NO EXCEPTIONS FILED TO ADMINISTRATIVE LAW JUDGE DECISION 17%
2/ OTHER 4.8%
SETTLEMENTS AND ADJUSTMENTS BY REGIONAL OFFICES 8.1%

1/ FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING

2/ DISMISSALS, WITHDRAWALS AND OTHER DISPOSITIONS

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 11,824 such charges in 52 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 9,186 charges, in about 41 percent of the total charges. (Table 2.)

Of charges against unions, the majority (7,858) alleged illegal restraint and coercion of employees, about 78 percent, the same percentage as last year. There were 1,395 charges against unions for illegal secondary boycotts and jurisdictional disputes, virtually the same as the 1,391 of 1984.

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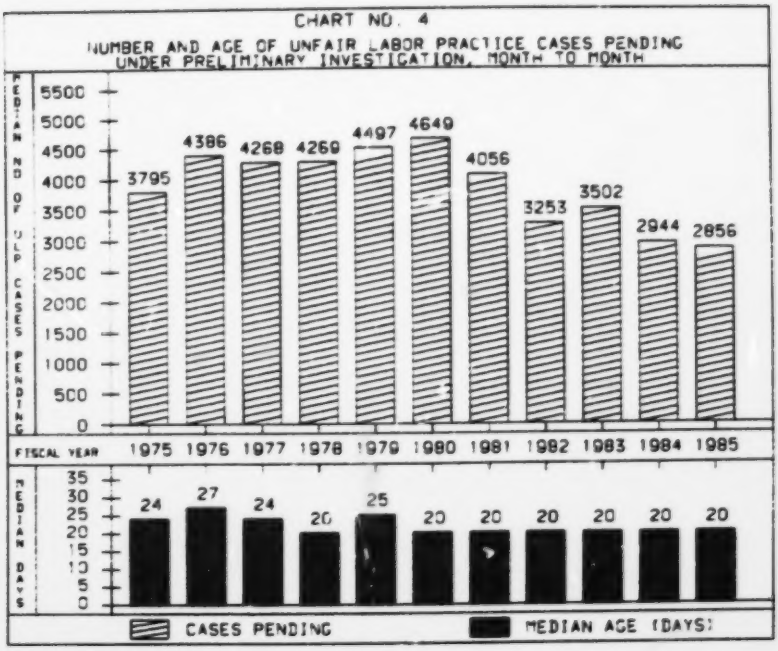

There were 1,420 charges (about 14 percent) of illegal union discrimination against employees, a decrease of 14 percent from the 1,660 of 1984. There were 288 charges that unions picketed illegally for recognition or for organizational purposes, compared with 290 charges in 1984. (Table 2.)

In charges filed against employers, unions led with 63 percent of the total. Unions filed 14,282 charges, individuals filed 8,248, and employers filed 15 charges against other employers.

In charges filed against unions, 6,995 were filed by individuals, or 69 percent of the total of 10,093. Employers filed 2,910 and other unions filed the 188 remaining charges.

In fiscal 1985, 33,946 unfair labor practice cases were closed. Some 93 percent were closed by NLRB Regional Offices, as compared to 94 percent in 1984. During the fiscal year, 28.8 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 29.3 percent were withdrawn before complaint, and 35.3 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal

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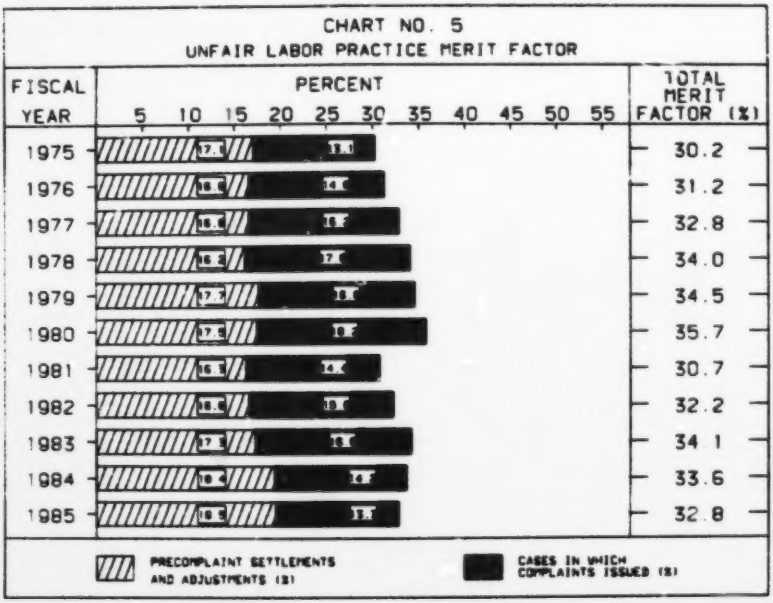

1985, 33 percent of the unfair labor practice cases were found to have merit, in fiscal year 1985 as compared to 34 percent in 1984.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal 1985, precomplaint settlements and adjustments were achieved in 6,349 cases, or 19.5 percent of the charges. In 1984 the percentage was 19.4. (Chart 5.)

Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1985, 3,638 complaints were issued, compared with 3,609 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 78.9 percent were against employers, 20.6 percent against unions, and 0.5 percent against both employers and unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 44 days. The 44 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

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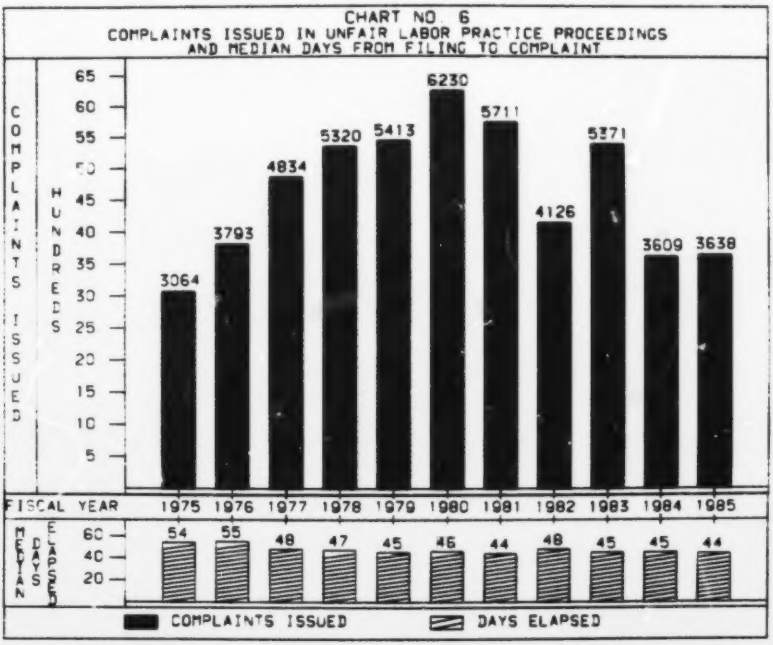

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 880 decisions in 1,103 cases during 1985. They conducted 703 initial hearings, and 45 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the five-member Board for final NLRB decision.

In fiscal 1985, the Board issued 851 decisions in unfair labor practice cases contested as to the law or the facts—773 initial decisions, 38 backpay decisions, 34 determinations in jurisdictional work dispute cases, and 6 decisions on supplemental matters. Of the 773 initial decision cases 649 involved charges filed against employers and 124 had union respondents.

For the year, the NLRB awarded backpay of $39.1 million. (Chart 9.) Reimbursements for unlawfully exacted fees, dues, and fines added another $0.7 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. Some 10,905 employees were offered reinstatement, and 91 percent accepted.

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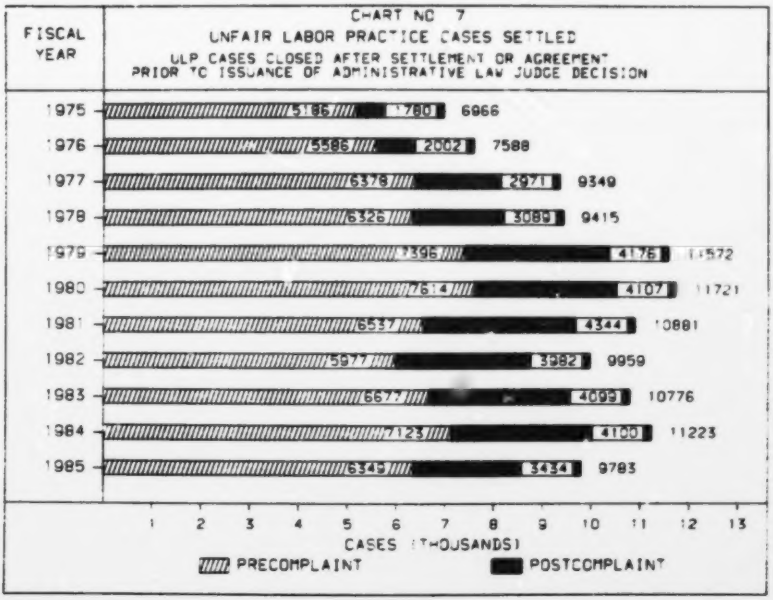
At the end of fiscal 1985, there were 16,394 unfair labor practice cases being processed at all stages by the NLRB, compared with 17,655 cases pending at the beginning of the year.



2. Representation Cases

The NLRB received 8,490 representation and related case petitions in fiscal 1985, compared with 8,589 such petitions a year earlier.

The 1985 total consisted of 6,209 petitions that the NLRB conduct secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1,675 petitions to decertify existing bargaining agents; 245 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 332 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units.

Additionally, 29 amendment of certification petitions were filed.

During the year, 8,382 representation and related cases were closed, compared with 8,573 in fiscal 1984. Cases closed included 6,139 collective-bargaining election petitions; 1,668 decertification election petitions; 228 requests for deauthorization polls; and

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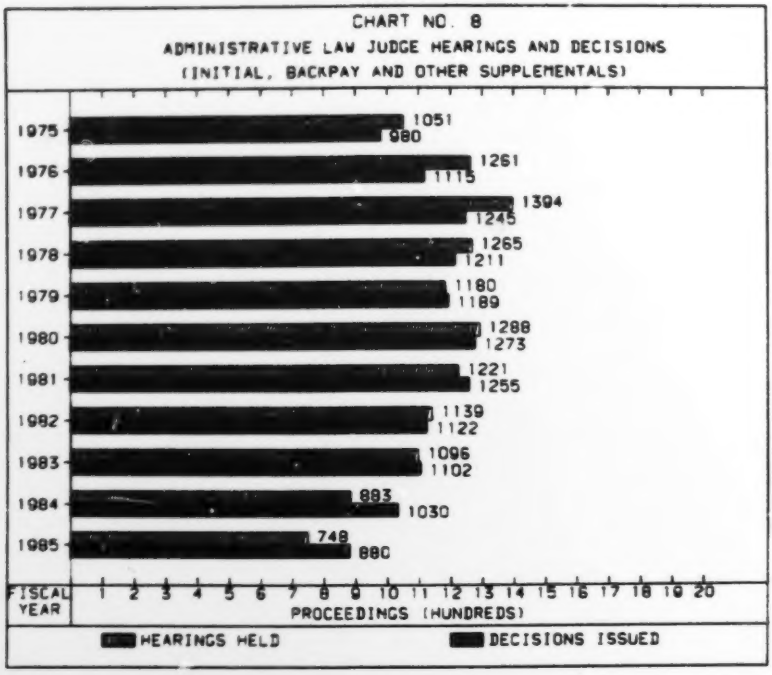

347 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB followed an agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 17.0 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. In 28 cases, the Board directed elections after appeals or transfers of cases from Regional Offices. (Table 10.) There were five cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

3. Elections

The NLRB conducted 4,614 conclusive representation elections in cases closed in fiscal 1985, compared with the 4,436 such elections a year earlier. Of 254,220 employees eligible to vote, 224,116 cast ballots, virtually 9 of every 10 eligible.

Unions won 1,956 representation elections, or 42.4 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 91,161

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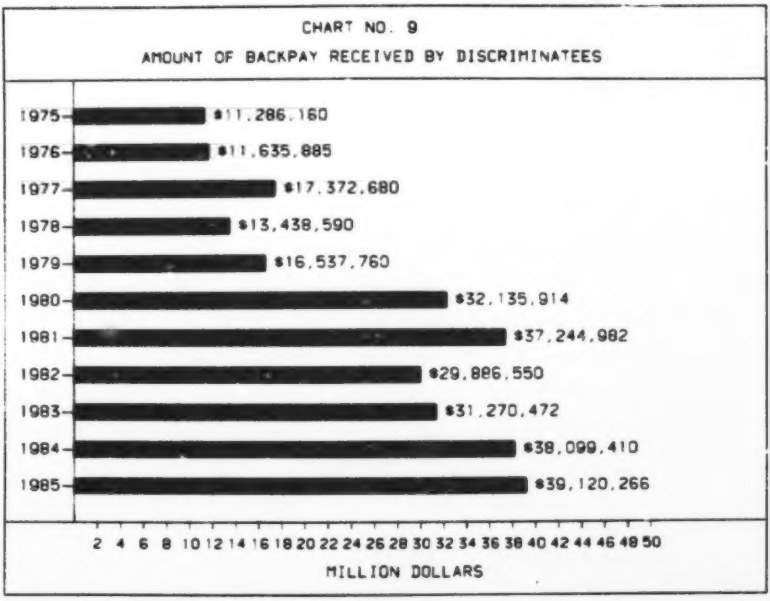

workers. The employee vote over the course of the year was 102,715 for union representation and 121,401 against.

The representation elections were in two categories—the 3,749 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 865 decertification elections determining whether incumbent unions would continue to represent employees.

There were 4,366 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1,752, or 40.1 percent. In these elections, 88,900 workers voted to have unions as their agents, while 115,754 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 74,986 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 248 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 204 elections, or 82.3 percent.

As in previous years, labor organizations lost decertification elections by a substantial margin—about 3 out of 4. The decertification results brought continued representation by unions in 211 elections, or 24.4 percent, covering 13,088 employees. Unions

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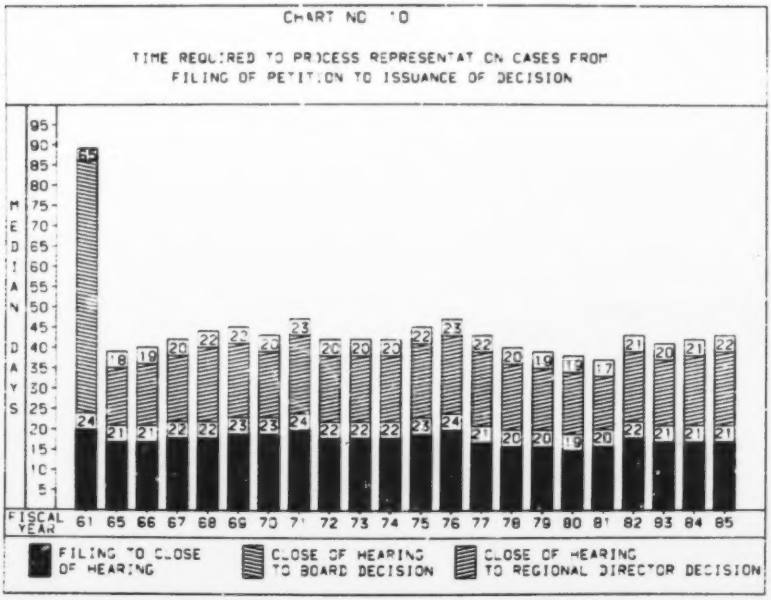
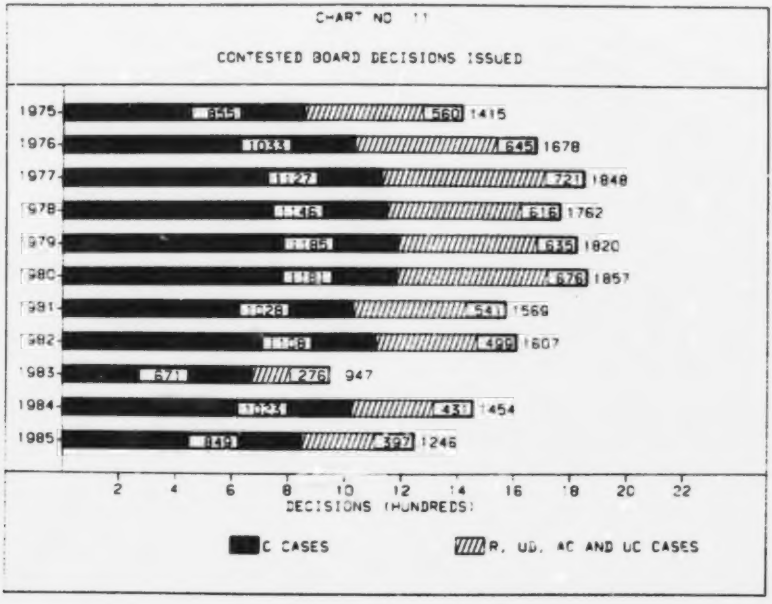


CHART NO 10
TIME REQUIRED TO PROCESS REPRESENTATION CASES FROM FILING OF PETITION TO ISSUANCE OF DECISION
MEDIAN DAYS
FISCAL YEAR
61 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85
FILING TO CLOSE OF HEARING
CLOSE OF HEARING TO BOARD DECISION
CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION



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lost representation rights for 23,801 employees in 654 elections, or 75.6 percent. Unions won in bargaining units averaging 62 employees, and lost in units averaging 36 employees. (Table 13.)

Besides the conclusive elections, there were 108 inconclusive representation elections during fiscal 1985 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 94 referendums, or 73 percent, while they maintained the right in the other 35 polls which covered 2,480 employees. (Table 12.)

For all types of elections in 1985, the average number of employees voting, per establishment, was 49 compared with 50 in 1984. About three-quarters of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)

4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1,995 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 2,206 decisions rendered during fiscal 1984.

A breakdown of Board decisions follows:

Total Board decisions		**1,995**
Contested decisions		**1,217**
Unfair labor practice decisions	849	
Initial (includes those based on stipulated record)	773	
Supplemental	6	
Backpay	36	
Determinations in jurisdictional disputes	34	
Representation decisions	369	
After transfer by Regional Directors for initial decision	20	
After review of Regional Director decisions	60	
On objections and/or challenges	281	
Other decisions	7	

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Clarification of bargaining unit	4	
Amendment to certification	0	
Union-deauthorization	3	
Noncontested decisions		778
Unfair labor practice	383	
Representation	388	
Other	7	

The majority (61 percent) of Board decisions resulted from cases contested by the parties regarding the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

In fiscal 1985 more than 11 percent of all meritorious charges and 70 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times longer to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 1,562 decisions in fiscal 1985, compared with 1,513 in 1984. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

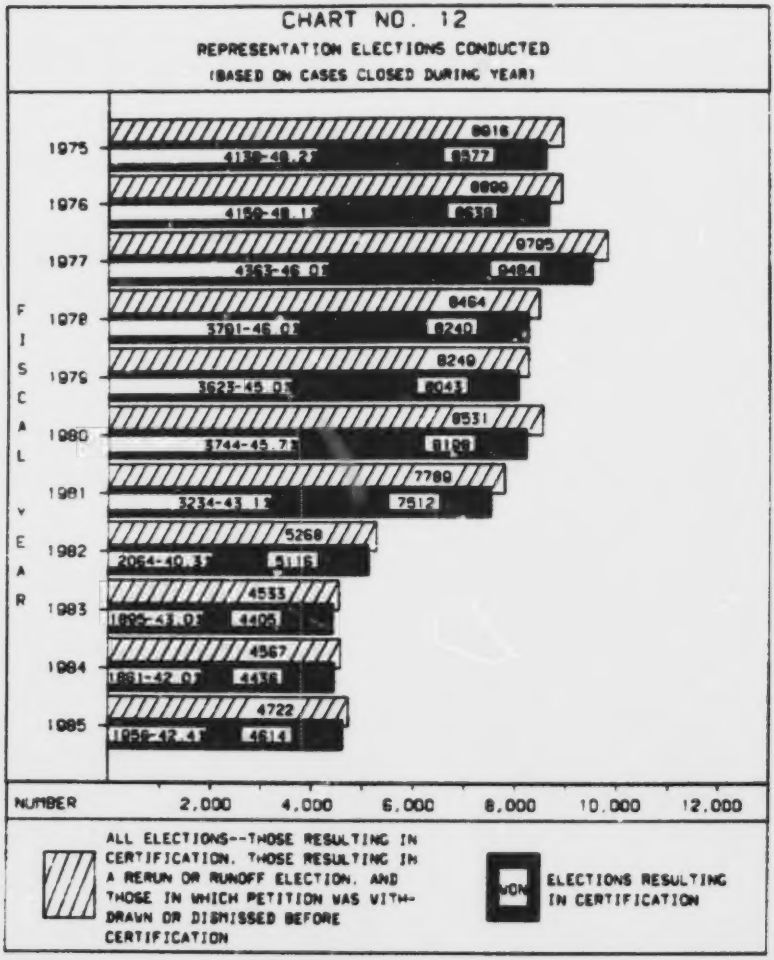
With a leveling in case filings alleging unfair labor practices, administrative law judges issued 880 decisions and conducted 748 hearings. (Chart 8 and Table 3A.)

5. Court Litigation

a. Appellate Courts

The NLRB is involved in more litigation in the United States courts of appeals than any other Federal administrative agency. In fiscal 1985, the Appellate Court Branch was responsible for handling 256 cases referred by the regions for court enforcement and 126 cases wherein petitions for review were filed by other parties for a total intake of 378 cases, 73 more than the previous year. By filing briefs in 204 cases and securing compliance in another 171 cases, dispositions were made in 375 cases. Oral arguments were presented in 184 cases compared with 194 in fiscal 1984. The median time for filing applications for enforcement was 29 days, compared with 18 days last year. The median time for both enforcement and review from the receipt of cases to the filing of briefs was 135 days, compared with 132 days in fiscal 1984.

In fiscal 1985, 189 cases involving NLRB were decided by the United States courts of appeals compared with 259 in fiscal 1984. Of these, 89.4 percent were won by NLRB in whole or in part



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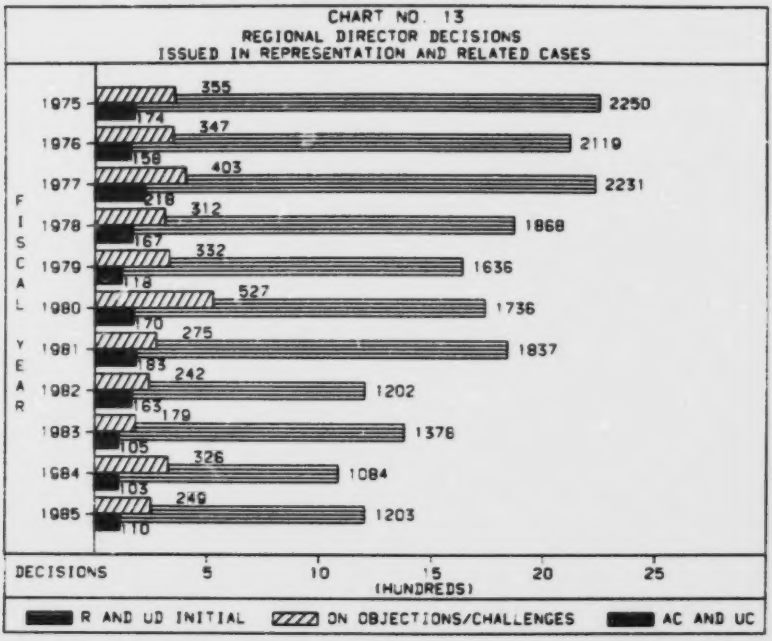

compared to 81.1 percent in fiscal 1984; 6.3 percent were remanded entirely compared with 8.5 percent in fiscal 1984; and 4.3 percent were entire losses compared to 4.3 percent in fiscal 1984.

b. The Supreme Court

In fiscal 1985, the Supreme Court decided three Board cases; the Board won two in full and lost one. In fiscal 1985 the Court denied 34 private party petitions for certiorari, the same as in 1984. Finally, in fiscal 1985, the Court granted three Board petitions for certiorari and three private party petitions.

c. Contempt Actions

In fiscal 1985, 135 cases were referred to the contempt section for consideration of contempt action. During fiscal 1985, 31 contempt proceedings were instituted. There were 17 contempt adjudications awarded in favor of the Board; 4 cases were discontinued upon compliance after petitions were filed before court orders; and there were 2 cases in which the Board's petition was denied on the merits.

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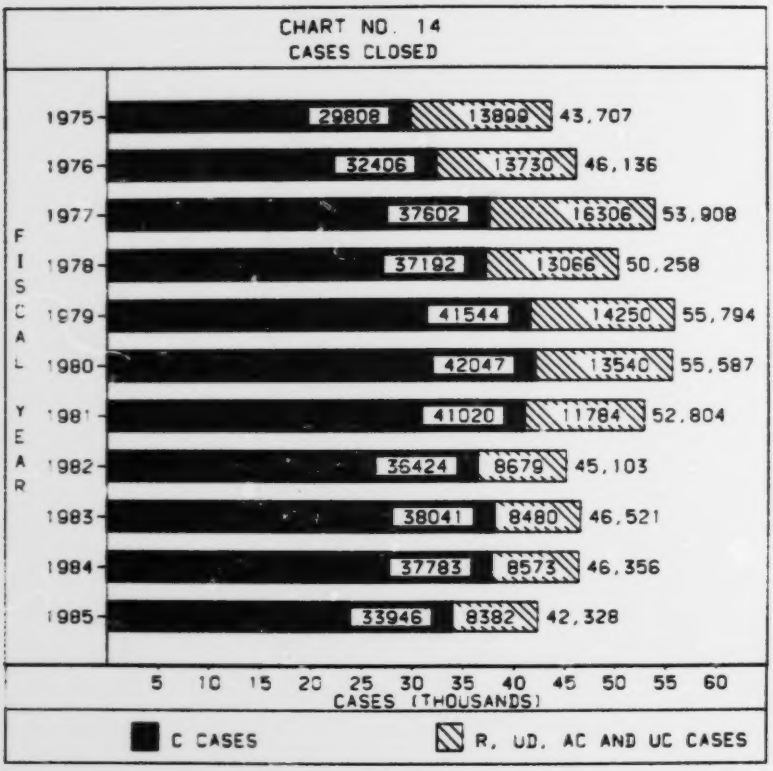

d. Miscellaneous Litigation

There were 52 additional cases involving miscellaneous litigation decided by appeliate, district, and bankruptcy courts. The NLRB's position was upheld in 45 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 89 petitions filed with the U.S. district courts, compared with 116 in fiscal 1984. (Table 20.) Injunctions were granted in 43, or 96 percent, of the 45 cases litigated to final order.

NLRB injunction activity in district courts in 1985:

Granted	43
Denied	2
Withdrawn	2
Dismissed	4
Settled or placed on court's inactive lists	42

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Awaiting action at end of fiscal year 10

C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "Board Procedures," Chapter III on "Representation Proceedings," and Chapter IV on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly five of the decisions establishing or reexamining basic principles in significant areas.

1. Section 10(b) Period

In *Ducane*,[1] the Board reconsidered its policy of treating dismissed unfair labor practice charges differently from withdrawn charges. The Board had formerly followed a policy of allowing the General Counsel discretion to reinstate dismissed charges, notwithstanding that the charge, at the time of reinstatement, was beyond the 6-month limitations period in Section 10(b) of the Act. The Board disagreed with the reasoning that Section 3(d) of the Act gave the General Counsel "virtually unlimited" discretion to reinstate dismissed charges. Thus, absent fraudulent concealment by a respondent, unfair labor practice charges can be reinstated only concerning events occurring within the 10(b) limitations period.

2. Union Access to Employer Property for Environmental Testing

In one case,[2] the Board was asked to consider a union's right of access to permit an industrial hygienist to survey a fan room of the employer's power plant for safety and health hazards. The fan room was a high noise level area, and employees were provided with protective devices to lower the noise level. Although the Board recognized the employer's property rights, it found that the employer's rights must be balanced against the union's right of access to perform its representation functions. Employees' right to responsible representation entails the union's obtaining accurate noise level readings. In making an accommodation of the two sets of rights, the Board found that the employer's

[1] *Ducane Heating Corp.*, 273 NLRB 1389.
[2] *Holyoke Water Power Co.*, 273 NLRB 1369.

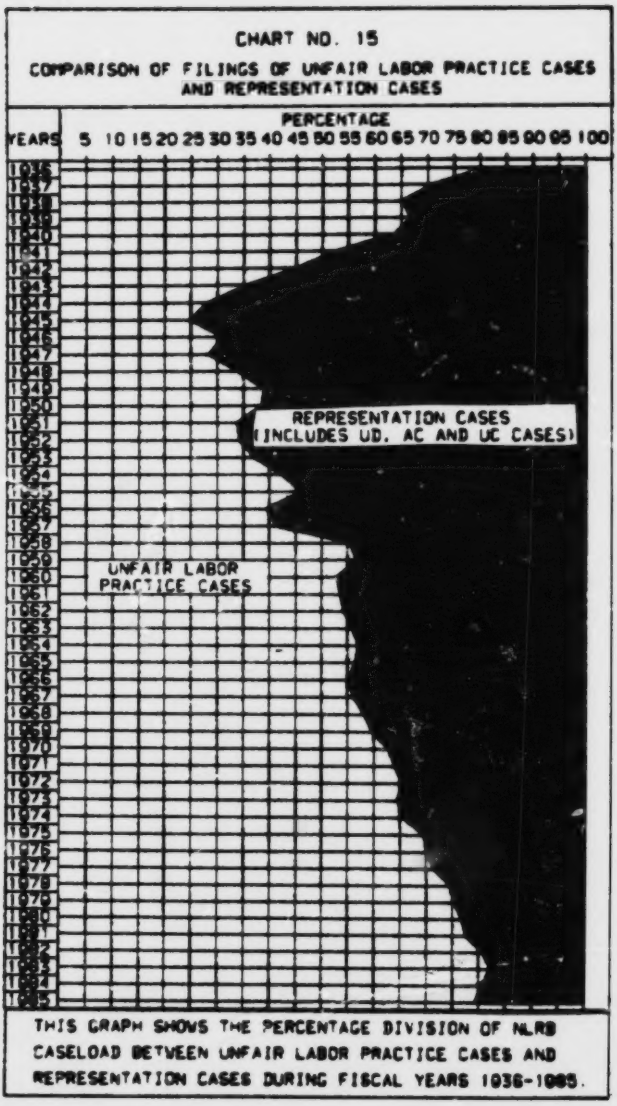
CHART NO. 15
COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES
YEARS
PERCENTAGE
5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100
REPRESENTATION CASES (INCLUDES UD, AC AND UC CASES)
UNFAIR LABOR PRACTICE CASES
THIS GRAPH SHOWS THE PERCENTAGE DIVISION OF NLRB CASELOAD BETWEEN UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES DURING FISCAL YEARS 1936-1985.

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property rights must yield to the extent necessary to permit the union hygienist to conduct noise level tests.

3. Treatment of Sympathy Strikers Under a No-Strike Clause

In one case,[3] the Board considered an employer's threat to discharge and suspension of employee for refusing to cross a stranger picket line. The contract between the employer and the union contained a broad no-strike clause that prohibited *any* strike, picketing, or interference with the employer's business. The Board reviewed prior precedent that held that, if a no-strike clause did not specifically mention sympathy strikes, the contract would not bar them unless extrinsic evidence clearly indicated the parties' intent to do so. The Board held that when a contract prohibits strikes, the Board shall read the prohibition "plainly and literally" to prohibit all strikes, including sympathy strikes. If the contract or extrinsic evidence indicates that the parties intended to exempt sympathy strikes, the parties' intent shall be given controlling weight. In accordance with these principles, the Board found that the employer's threat to discharge and suspension of the employee for refusing to cross the picket line was not unlawful.

4. *Weingarten* Rights and Remedies

In *Sears, Roebuck & Co.*,[4] the Board reconsidered its position of whether an unrepresented employee has a right to a *Weingarten*[5] representative. At an interview to impose discipline on an employee, the employee sought to have present a fellow employee or a representative of a union that was engaged in organizing efforts. The Board first noted that there was no right to a *Weingarten* representative at an interview when the only purpose was to impose discipline. The Board went on, however, to overrule its prior decision that established that an unrepresented employee has a right to a *Weingarten* representative. In so doing, the Board found that imposition of *Weingarten* rights in an interview when no union is present was at odds with fundamental provisions of the Act, which allows an employer to deal with employees on an individual basis. Requiring an employer to recognize and deal with a *Weingarten* representative in a nonunion setting imposes a requirement on the employee to recognize and deal with the equivalent of a union representative, contrary to the Act's exclusivity provision.

In another case,[6] the Board reviewed its remedial order provisions when an employee's right to a *Weingarten* representative was violated. An employee was called to the plant manager's office for an investigatory interview as a result of an incident in

[3] *Indianapolis Power & Light Co.*, 273 NLRB 1715.
[4] 274 NLRB 230.
[5] *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).
[6] *Taracorp Industries*, 273 NLRB 221.

which the employee refused to follow a supervisor's order. Once in the plant manager's office, the employee requested his union representative, and the plant manager refused. Subsequently, at the interview the employee was fired because of the in-plant incident. The Board upheld the finding of a violation as a result of the plant manager's denial of the employee's request for representation. The Board disagreed with the recommended remedy of reinstatement and backpay for the employee. The Board was unable to justify make-whole relief for an employee who was terminated for misconduct when the employer's only violation was a denial of a request for union representation at an investigatory interview. The Board distinguished cases when an employee was discharged for engaging in protected activity. By contrast, in *Weingarten* cases the reason for the discharge is not protected activity but rather employee misconduct. Therefore, because of the limitations placed on remedial orders by Section 10(c) of the Act and because in the Board's view prior decisions had exceeded the intended scope and limitations of the Supreme Court's decision in *Weingarten*, the Board held that it lacked the authority to order reinstatement and backpay as a remedy for a *Weingarten* violation.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1985, are as follows:

Personnel compensation	$93,265,370
Personnel benefits	11,330,827
Travel and transportation of persons	4,889,575
Transportation of things	231,460
Rent, communications, and utilities	18,439,116
Printing and reproduction	547,990
Other services	4,783,685
Supplies and materials	1,648,641
Equipment	2,286,961
Insurance claims and indemnities	74,775
Total obligations and expenditures	$137,498,400

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II

Board Procedure

The Board processes alleged violations of the National Labor Relations Act through specific investigative and adjudicative procedures. The filing of an unfair labor practice charge activates the Board's machinery. The Board investigates the charge through the appropriate Regional Office. The Regional Director may dispose of the case at this level by approving a settlement agreement executed by the parties. Alternatively, the General Counsel might dismiss the case as lacking merit. If the General Counsel issues an unfair labor practice complaint, the case proceeds to a hearing before an administrative law judge. The judge issues a decision at the conclusion of the hearing. The parties may file exceptions to this decision. On the basis of the judge's decision and the parties' exceptions, the Board renders a final Decision and Order, dismissing the complaint or directing appropriate remedial action. During the report year, the Board decided significant cases involving each of these stages of the Board's unfair labor practice procedure.

A. 10(b) Issues

As mentioned above, the filing of a charge activates the Board's processes. The charge enables the General Counsel, after due investigation, to issue a complaint. Section 10(b) of the Act provides, however, "[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge."

In *Ducane Heating Corp.*,[1] the Board held that a dismissed charge may not be reinstated outside the 6-month limitations period of Section 10(b) "absent special circumstances in which a respondent fraudulently conceals the operative facts underlying the alleged violation." Where there is fraudulent concealment, the limitations period begins to run when the charging party knows or should have known of the concealed facts. Finding no substantive distinction between a withdrawn and a dismissed charge, the Board no longer will treat withdrawn and dismissed charges differently for purposes of Section 10(b). Rather, the Board will not allow the reinstatement of either beyond the 6-

[1] 273 NLRB 1389 (Chairman Dotson and Members Hunter and Dennis).

month limitations proviso absent special circumstances. Accordingly, the Board reversed *California Pacific Signs*,[2] on which the judge had relied, and *Winer Motors*[3] to the extent that they are inconsistent with the decision.

Applying these principles, the Board concluded that the reinstatement of the dismissed charge allegations relating to employee McCrea's September 1979 suspensions outside the limitations period—i.e., some 10 months later in July 1980—cannot be permitted. The Board did not find any fraudulent concealment in this case which would warrant extending the limitations proviso. In this regard, the Board noted that the General Counsel had never asserted or shown any fraudulent concealment of operative facts relating to McCrea's suspensions. Rather, the General Counsel apparently reviewed the suspensions in light of the subsequent February 1980 discharge of McCrea, which became the subject of a charge filed in April 1980, and reconsidered the earlier dismissal of the suspensions on that basis. For these reasons, the Board found that the 10(b) period for McCrea's suspensions had expired in March 1980 and dismissed the complaint allegations pertaining to them.

In a similar case during the report year, *Duff-Norton Co.*,[4] the panel majority concluded that a charge could not properly be reinstated outside the 10(b) limitations period because there was no fraudulent concealment of operative facts underlying the violation. The majority noted that employee Privette, a quality control inspector, was discharged for failing to properly inspect the production of a machine operator who had produced a substantial amount of defective parts.

The union filed a charge, later dismissed by the Acting Regional Director, alleging the discharge to be violative of Section 8(a)(3). The General Counsel reinstated the charge outside the limitations period based on newly discovered evidence that the employer's supervisor, Tucker, had set up Privette for discharge by tampering with certain machines at the workplace. At the hearing, Tucker testified that he had tampered with the machines after he had heard the employer's plant manager say that he would like to get rid of Privette. Thereafter, a machine operator, whose production Privette was charged with inspecting, produced the defective parts which ultimately led to Privette's discharge.

The majority did not view Tucker's alleged actions as "fraudulent concealment" even assuming that he did tamper with the machines and that this, in part, caused the production of defective parts. The majority stated that Tucker's action only indirectly affected Privette, who was an inspector and not a machine op-

[2] 233 NLRB 450 (1977).
[3] 265 NLRB 1457 (1982).
[4] 275 NLRB 646 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

erator. They held that Tucker's tampering would have caused only some, not all, of the defects present in the parts.

The majority also noted that Privette did not check the machine operator's production for some 4-1/2 hours.

The majority thus concluded that there was an insufficient nexus between Tucker's asserted tampering and Privette's performance of his inspection duties to conclude that the employer fraudulently concealed operative facts pertaining to Privette's discharge.

Dissenting, Member Dennis would have found fraudulent concealment because the alleged sabotage provided the basis for Privette's cause of action, that is, the employer attempted to entrap him and manufacture a pretext for his discharge.

B. Effect of Settlement Agreement

In *Universal Blanchers*,[5] the Board considered whether the Acting Regional Director's retraction of an 8(a)(1) settlement agreement and subsequent issuance of a complaint alleging violations of Section 8(a)(1) and (3) were proper where the Regional Director did not know that appeals of his dismissal of the charging parties' 8(a)(3) allegations were pending at the time he approved the settlement agreement.[6]

Charging parties Jordan and Cook filed separate appeals of the Regional Director's dismissal of the 8(a)(3) allegations after signing a settlement agreement remedying the 8(a)(1) allegations. Neither party, however, filed copies of the appeals with the Regional Director, who approved the settlement agreement prior to receiving notice of the appeals from the General Counsel.[7]

On receipt of such notice, the Acting Regional Director retracted the approval of the agreement, noting that through administrative inadvertence the settlement was approved while the 8(a)(3) appeals were pending, and notified the parties that the 8(a)(1) allegations would be held in abeyance pending the outcome of the appeals. After the General Counsel sustained the appeals, the Regional Director issued a complaint alleging that the respondent violated Section 8(a)(1) and (3) of the Act.

In granting the respondent's Motion for Summary Judgment, the Board, citing *Henry I. Siegel Co.*,[8] agreed with the respondent that retraction of the settlement agreement was not proper because the respondent had neither breached the agreement nor committed postsettlement violations of the Act.

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[5] 275 NLRB 1544 (Chairman Dotson and Members Hunter and Dennis).

[6] The case was before the Board on the respondent's Motion for Summary Judgment.

[7] Included in the Regional Director's letters to the charging parties dismissing the 8(a)(3) allegations was Form NLRB-4938, Procedures for Filing an Appeal. This form, as well as Sec. 102.19 of the Board's Rules and Regulations, provides that copies of appeals of a Regional Director's refusal to issue a complaint should be filed with the Regional Director. Sec. 102.19 also states that failure to give such notice shall not affect the validity of the appeal.

[8] 143 NLRB 386 (1963).

Further, adhering to the view expressed in *Hollywood Roosevelt Hotel Co.*[9] that a settlement agreement disposes of all presettlement conduct unless the presettlement conduct was not known to the General Counsel, not readily discoverable through investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties, the Board found that none of these exceptions were applicable, and therefore that approval of the settlement agreement barred the litigation of the presettlement conduct alleged in the complaint. Specifically, the Board rejected the General Counsel's contention that the retraction was valid, and the presettlement conduct litigable, because at the time the Regional Director approved the settlement agreement he did not have knowledge of the pending appeals. The Board stated that it attached no significance to the fact that the Regional Director was personally unaware of the appeals; rather, it stated:

> What is critical here is that the General Counsel, through its Office of Appeals, had knowledge of the pending appeals, and the Office of the Regional Director, in investigating the charges, signing the settlement agreement, and reinstating the complaint, was acting as an agent of the General Counsel.

The Board noted that the General Counsel has final authority for the investigation of unfair labor practice charges and the issuance of complaints. Citing *Laminite Plastics Mfg. Corp.*,[10] the Board stated that because the parties to a settlement agreement should be able to expect the fulfillment of its terms, the alleged unfamiliarity with Board procedure and administrative inadvertence were insufficient to warrant a departure from the settlement bar doctrine.

C. Failure to File Answers to Complaint

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations shall be deemed to be admitted to be true and may be so found by the Board."

In *Orange Data, Inc.*,[11] the General Counsel filed a Motion for Summary Judgment, asserting that the respondent had failed to file an answer to the complaint as required under the Board's Rules and Regulations.

The record revealed that the respondent had filed an answer to an initial complaint. The parties subsequently entered into a

[9] 235 NLRB 1397 (1978).
[10] 238 NLRB 1234, 1235 (1978).
[11] 274 NLRB 1018 (Chairman Dotson and Members Hunter and Dennis).

standard informal settlement agreement utilizing the revised NLRB Form-4775, which explicitly withdrew the complaint as well as any answer filed in response. The Regional Director thereafter withdrew approval of the settlement agreement and issued another complaint containing allegations substantially the same as the unfair labor practice allegations contained in the initial complaint. The respondent did not file an answer to the reissued complaint.

The issue was whether the respondent's answer to the initial complaint remained extant and thus precluded granting the Motion for Summary Judgment.

The Board panel decided to adhere to the language of the settlement agreement, which explicitly withdrew the answer filed to the initial complaint, and concluded that inasmuch as no answer had been filed to the reissued complaint, there was no legal restraint to granting the Motion for Summary Judgment.

D. Filing of Exceptions

If the General Counsel decides to prosecute an unfair labor practice case, the case proceeds to a hearing before an administrative law judge. The judge's decision operates as a recommendation to the Board. The parties may file exceptions to the judge's decision. These exceptions must comply with Section 102.46(b) of the Board's Rules and Regulations, which sets forth the minimum requirements with which exceptions to an administrative law judge's decision must comply in order to merit consideration by the Board. A party excepting to the findings of an administrative law judge must set forth with specificity those portions of the judge's decision to which it excepts, and support the contentions with legal or record citations or appropriate argument.

In *Bonanza Sirloin Pit*,[12] the Board rejected the respondent's exceptions as they failed to put in issue any findings of the judge.

The Board deemed the respondent's exceptions inadequate as they constituted virtually a wholesale listing of each and every finding, conclusion, and recommendation of the judge. The respondent failed to submit a supporting brief or any other document alleging with any degree of particularity what error, mistake, or oversight the judge committed or on what grounds the findings should be overturned. Consequently, the respondent would have had the Board engage in its own attempts to determine what, if any, problems, errors, or irregularities are possibly presented by the judge's decision. The Board has consistently refused to do this.[13]

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[12] 275 NLRB 310 (Chairman Dotson and Member Dennis; Member Hunter concurring).

[13] *Fiesta Printing Co.*, 268 NLRB 660 (1984); *Ditch Witch, Inc.*, 248 NLRB 452 (1980); *Aitoo Painting Corp.*, 238 NLRB 366 (1978).

Member Hunter concurred with the result reached by the Board. He believed the judge's findings to be legally correct and supported by the record. Contrary to his colleagues, Member Hunter would not have rejected the respondent's exceptions because he disagreed with his colleagues' conclusion that the exceptions do not put in issue any of the judge's findings. The respondent's exceptions designated specific sections of the judge's decision which were excepted to, and he would not reject them merely because they did not set out any factual basis or legal argument for reversing the judge. Although, under Section 102.46(b), the Board may disregard such exceptions, he thought the better course was to consider them because the respondent had sufficiently alerted the Board to those sections of the judge's decision claimed to be erroneous. In these circumstances he would not have rejected exceptions based on a mere technical noncompliance with the Rules and Regulations.

III

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections.

The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment.

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents who have been previously certified, or who are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representative were adapted to novel situations or reexamined in the light of changed circumstances.

A. Defunct Labor Organization

In certain circumstances the Board—in the interest of promoting the stability of labor relations—will find that circumstances appropriately preclude the raising of a question concerning representation. One such circumstance occurs under the Board's contract-bar rules. Under these rules, a present election among employees currently covered by a valid collective-bargaining

agreement may, with certain exceptions, be barred by an outstanding contract.

The key issue presented in one case during the report year, *Kent Corp.*,[1] was whether a collective-bargaining agreement between an employer and an employee association was a bar to an election petition filed by an international union because the employee association was defunct. The Board disagreed with the Regional Director's resolution of this issue and found that there was a contract bar to the petition.

The Regional Director had found the employee association was defunct because "there are no members; no membership applications; no initiation fees; no dues; no treasury; no bank account; no books, records, meetings or recent (if any) election of officers; and no information available to employees regarding 1982 contract negotiations or attempts to enforce the collective bargaining agreement." The Board disagreed with the Regional Director's analysis, finding that he misapplied the standard established in *Hershey Chocolate Corp.*[2] for determining whether a labor organization is defunct. The *Hershey* standard is that "a representative is defunct, and its contract is not a bar, if it is unable or unwilling to represent the employees. However, mere temporary inability to function does not constitute defunctness; nor is the loss of all members in the unit the equivalent of defunctness if the representative otherwise continues in existence and is willing and able to represent the employees."[3]

The Board concluded that "[w]hile the separate internal factors relied on by the Regional Director may be considered in determining whether a labor organization is able and willing to represent employees (e.g., no members or dues), those factors standing alone are not sufficient to warrant a conclusion that an organization is defunct. Regardless of the relative inactivity of a labor organization, the critical question is its willingness and ability to represent employees."

Under this rationale, the Board found that the employee association was not defunct because its vice president and a member of its negotiating committee testified to their willingness to continue to represent employees and there was no evidence that the employee association was called on and failed to act on unit employees' behalf. Accordingly, the Board held that the 1982–1985 collective-bargaining agreement between the employer and the employee association constituted a contract bar necessitating the dismissal of the petitioning labor organization's election petition.

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[1] 272 NLRB 735 (Chairman Dotson and Members Zimmerman and Dennis).

[2] 121 NLRB 901 (1958).

[3] Id. at 911.

B. Qualification of Bargaining Representative

The Board will refuse to direct an election where the proposed bargaining agent fails to qualify as a bona fide representative of employees.

In *Stewart-Warner Corp.*,[4] a Board panel reversed a Regional Director and dismissed a petition filed by a newly created independent union seeking to represent a unit of security guards. The Board found that the petitioning union was precluded by Section 9(b)(3) of the Act from being certified as the exclusive bargaining representative of the guards because the petitioner was indirectly affiliated with an organization which admitted to membership employees other than guards, a Teamsters local union.

The Board found that in the approximately 2 months from the Teamsters local's withdrawal of its petition covering the security guards unit to the hearing on the petitioner's petition, the petitioner took almost no action independent of the Teamsters local. The Board noted that the petitioner's president was a longtime friend of officers and agents of the Teamsters local, and was "sought" by that local to continue organizational efforts among the security guards immediately after the Teamsters withdrew its own petition. Further, the Board pointed out that the Teamsters local prepared the showing of interest petition circulated among the security guards, obtained employee signatures on this petition, and prepared the representation petition filed by the petitioner.

The Board also stated that the petitioner had no assets or expertise suggesting its ability to function independently of the Teamsters local and that the petitioner's president had been continuously dependent on the Teamsters officers for advice and assistance regarding every significant aspect of the petitioner's formation. Under all the circumstances, the Board concluded that the extent and duration of the petitioner's dependence on the Teamsters local indicated a lack of freedom and independence in formulating its own policies and supported a finding that the petitioner was indirectly affiliated with the Teamsters local.

In *University of Chicago*,[5] the Board reviewed whether a union disqualified from certification should be permitted to intervene in a Board-conducted election. The case arose when an individual employed by the employer filed a petition to decertify the incumbent Local 200. Local 710 demonstrated the requisite showing of interest to intervene. Since Section 9(b)(3) of the Act disqualifies Local 710 from certification as the bargaining representative of the guard unit involved in this case—because it admits nonguards into its membership—the Regional Director empha-

[4] 273 NLRB 1736 (Chairman Dotson and Members Hunter and Dennis).

[5] 272 NLRB 873 (Chairman Dotson and Members Hunter and Dennis; Member Zimmerman dissenting).

sized, citing *Bally's Park Place*,[6] that he would certify only the arithmetical results if Local 710 won the election.

The majority found that Section 9(b)(3) not only barred the formality of certification but also precluded a disqualified labor organization from taking advantage of the Board's election processes, including the privilege of being placed on the ballot as an intervenor with an accompanying certification of arithmetical results. The majority pointed out that Congress sought through the provisions of Section 9(b)(3) to eliminate conflict of loyalties when a guard is called on to enforce his employer's rules against a fellow union member. It noted legislative history that plant guards were protected by the Act "only if they had a union separate and apart from the union of the general employees."

The majority found that Section 9(b)(3) applies both to mixed units of guards and other employees and to guard-nonguard unions. In achieving a uniform result the majority found that the statute renders the former inherently inappropriate and proscribes the Board from certifying the latter. Moreover, the majority held that placing a guard-nonguard union on the ballot contributes to a result antithetical to the legislative history of Section 9(b)(3). It said such practice creates the false impression that the guard-nonguard union is equally as capable of securing the protections of the Act as other candidates on the same ballot. This decision overrules *Burns Detective Agency*, 138 NLRB 449 (1962), and *Bally's Park Place*, supra.

Member Zimmerman dissented, urging that, although Section 9(b)(3) forecloses Board certification of a union that admits both guards and nonguards into membership, it does not deprive guards of the right granted under Section 7 to bargain collectively through a representative of their own choosing, including a noncertifiable union. He urged that the majority creates a conflict between Section 7 and Section 9(b)(3) where none exists. Member Zimmerman found nothing in Section 9(b)(3) that prohibits the Board from allowing its processes to be used to the extent possible to assist employees in selecting or retaining the representative of their choice. All that section does, he said, is prohibit the Board from placing its imprimatur on the choice of representative if a unit of guards selects a guard-nonguard union. Finally, he relied in his dissent on *Wells Fargo*[7] and *Brink's*[8] that nothing in the legislative history of Section 9(b)(3) supports a total ban on the use of Board processes by a guard-nonguard union.

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[6] 257 NLRB 777 (1981).

[7] *Wells Fargo Corp.*, 270 NLRB 787 (1984).

[8] *Brink's Inc.*, 272 NLRB 868 (1984).

C. Bargaining Unit Issues

1. *Yeshiva University* Standards

A bargaining unit may include only individuals who are "employees" within the meaning of Section 2(3) of the Act. The major categories expressly excluded from the term "employee" are agricultural laborers, independent contractors, and supervisors. In addition, the statutory definition excludes domestic servants, or any one employed by his parent or spouse, or persons employed by a person who is not an employer within the definition of Section 2(2). These statutory exclusions have continued to require the Board to determine whether the employment functions or relations of particular employees preclude their inclusion in a proposed bargaining unit.

In a significant ruling during the report year, the Board had the opportunity to decide whether college faculty members were employees within the meaning of Section 2(3) of the Act or managerial employees excluded from the protection of the Act.

In *Cooper Union of Science & Art*,[9] a Board panel, reversing the administrative law judge, found that under the standards established by the Supreme Court in *NLRB v. Yeshiva University*,[10] faculty members employed by Cooper Union were not managers, but employees within the meaning of Section 2(3) of the Act, and that the university therefore violated Section 8(a)(5) by withdrawing recognition from, and refusing to bargain with, the labor organization which represented the faculty members. Specifically, applying the standard adopted by the Supreme Court in *Yeshiva*, the Board found that Cooper Union's faculty members, unlike those in Yeshiva University, did not "formulate and effectuate management policies by expressing and making operative the decisions of their employer," and that, therefore, they were not managerial personnel excluded from the coverage of the Act.

Examining both the formal, written governance structure of Cooper Union and the processes by which institutional decisions actually were made, the Board found that, although the faculty had some input, it lacked the kind of absolute authority over academic matters and substantial input into nonacademic matters which the Supreme Court found to exist among the faculty members in *Yeshiva*.

Specifically, the Board found that in academic matters, although faculty members participated with administrators in joint committees on admissions, academic standards, administration, and curriculum, the faculty's role often was overshadowed by that of administrators, for example by administrators who theoretically were nonvoting members actually voting; by administrators chairing key committees and, in some cases, preventing them

[9] 273 NLRB 1768 (Chairman Dotson and Members Dennis and Hunter).
[10] 444 U.S. 672 (1980).

from meeting; and by faculty members being in the minority on some committees.

The Board also found that major decisions affecting academic matters, such as the creation and elimination of degree programs, the reorganization of academic departments, exclusion of a large portion of the faculty from academic decision-making bodies, restructuring the library system, creating a special admissions program, and amending the institution's formal governance documents, were made without faculty approval or over faculty opposition.

The Board found that in nonacademic areas the faculty played a very limited effective role. In this regard, the Board noted particularly that "decisions on the hiring, promotion, tenure, and retention of teaching staff are frequently made in the absence of faculty recommendations, and when they are made following faculty recommendations, those recommendations are frequently rejected." The Board also found that the faculty had "virtually no role in the areas of budget and facilities," noting that major decisions in these areas were made without faculty input or over faculty opposition.

The Board concluded that "[i]n this context, we regard the fact that faculty members are actively involved in making more routine academic decisions such as the substitution of one course for another and . . . the admission of individual applicants does not rise to the level of . . . 'formulat[ing] and effectuat[ing] management policies by expressing and making operative the decisions of their employer' within the meaning of *Yeshiva*."

In another application of *Yeshiva* standards, the Board in *FHP, Inc.*[11] found that doctors and dentists who sat on committees directing a health maintenance organization (HMO) were managerial employees excluded from the Act's coverage. The employer maintained six standing and various ad hoc committees consisting of physicians and dentists, including at least one official of undisputed managerial or supervisory status on each committee. The committees varied concerning length of service required for a physician or dentist to participate, and any such full-time employee could be called on to serve on one or more committees on a rotating basis. During the year before the representation hearing, 38 out of about 70 full-time physicians and dentists served on committees, and more than half of those employed served over the past 5 years.

The Acting Regional Director directed an election in a unit of all full-time and regular part-time physicians and dentists in two of the HMO clinics, finding that their participation on committees is "primarily advisory or related to the quality of patient care in the clinics based on their professional experience." He

[11] 274 NLRB 1141 (Chairman Dotson and Members Hunter and Dennis).

found that the doctors and dentists were not managerial employees.

On a request for review of the Acting Regional Director's decision, the Board reversed. It examined the functions of each committee and concluded that, like the faculty of Yeshiva University, the full-time physicians and dentists "possess and exercise authority to formulate and effectuate management policies." The Board stated that "the functions of staff committees are by no means all-encompassing in terms of discharging the organization's total managerial agenda," and that many managerial decisions were made exclusively at the corporate level without participation of staff professionals.

The Board found that decisions made at the committee level, such as "managing the organization's protocol system, overseeing its medical record systems, setting its medicinal prescription policy, reviewing and modifying the benefits and working conditions of its staff, establishing procedures and staff training for medical emergencies, and minimizing the institution's risk of medical malpractice liability, lie at the core of the health maintenance organization's operations." The Board concluded these were managerial functions within the meaning of *Yeshiva.*

The Board also found that the functions of at least some of the organization's committees were "clearly more than advisory." Thus, the peer review committee may take direct action or instruct the HMO's provider director to do so in the retaining, monitoring, and discipline of staff physicians, and another committee itself develops the institutions formulary, evaluating both patient care and cost-related concerns. Thus, the Board concluded, the full-time physicians and dentists, "in their capacity as committee members, effectively formulate and effectuate the policies of the Employer," and are therefore managerial employees.

On the other hand, because no part-time physicians or dentists sit on managerial committees, the Board found that they were employees covered by the Act. However, because the union had not expressed an interest in proceeding to an election in a unit of part-time physicians and dentists—one "drastically different" from the one the Acting Regional Director had approved—the Board dismissed the representation petition.

2. Health Care Units

In *Southern Maryland Hospital,*[12] the Board considered whether a unit of technical employees was appropriate in a health care institution. In affirming the Regional Director's finding that a technical unit was appropriate, the Board, applying the "disparity of interests" test as defined in *St. Francis Hospital,*[13] found

[12] 274 NLRB 1470 (Chairman Dotson and Members Hunter and Dennis).
[13] 271 NLRB 948 (1984).

"sharper than usual differences between the wages and working conditions of technical employees and those in the overall professional unit." There was a substantial disparity in wages between service and maintenance employees and technical employees (as much as 25 to 35 percent). There was also a difference in qualifications, training, and skills between the two groups. Technical employees' functions involved the use of independent judgment and specialized training, whereas service and maintenance employees needed only a high school education. There was no temporary interchange between service and maintenance and technical employees because of higher skills and specialized functions of technical employees, and there was minimal permanent transfer from nontechnical to technical classifications.

The Board noted that this was a large general service hospital employing approximately 1200 nonsupervisory employees in approximately 30 departments. Although there was some degree of integration and contact between technical and nontechnical employees because of the "team" concept of patient care, the Board noted that such interaction was necessary to the delivery of patient care in a large facility.

In *St. Luke's Hospital*,[14] the Board considered the issue of whether separate bargaining history is controlling in unit determinations in the health care field under *St. Francis Hospital*. The Regional Director concluded that under the *St. Francis* disparity of interests test the petitioned-for LPN unit would be inappropriate because there are no "sharper than usual differences" between wages, hours, and working conditions of the requested employees and those of the technical employees. Nevertheless, the Regional Director found the unit appropriate. He concluded that past separate bargaining history continues to be a relevant and controlling factor in unit determinations in the health care field. He found that bargaining history constitutes a special circumstance which warrants a unit determination which might otherwise be inappropriate.

The Board disagreed and found that the petitioned-for LPN unit was clearly inappropriate. The Board concluded that although bargaining history is a factor which may be considered in making unit determinations in the health care industry, it is not controlling under *St. Francis*. Bargaining history alone does not constitute a special circumstance by which an otherwise inappropriate health care unit may be found appropriate.

3. Warehouse Unit

The following bargaining unit question was posed in another representation case considered by the Board during the report year: What conditions must be met to find appropriate a separate warehouse unit in the retail store industry?

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[14] 274 NLRB 1431 (Chairman Dotson and Members Hunter and Dennis).

In *Roberds, Inc.*,[15] the Regional Director found appropriate a unit of all full-time and regular part-time warehouse employees, truckdrivers, helpers and service employees at the employer's retail carpet, furniture, and appliance store and warehouse, but excluding all office clerical employees, all sales employees, all other employees, and all professional employees, guards and supervisors as defined in the Act. A Board panel held, however, that the separate warehouse unit was inappropriate because it did not meet the first two of the following conditions set forth in *A. Harris & Co.*[16] for finding appropriate such a unit in the retail store industry: (1) geographic separation of the warehouse from the retail store operation, (2) absence of substantial integration among the warehousing employees and those engaged in other store functions; and (3) separate supervision of the employees engaged in warehousing functions.

D. Election Objections

An election will be set aside and a new election directed if the election campaign was accompanied by conduct which the Board finds created an atmosphere of confusion or fear of reprisals, or which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees, but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent the free expression of the employees' choice. In making this evaluation, the Board treats each case on its facts, taking an ad hoc rather than a per se approach to resolution of the issues.

Electioneering is permissible under the Act. However, the Board may invalidate the result of a representation election if the campaign tactics adopted by a party tend to exert a coercive impact. In other words, the employer or the union may attempt to influence the votes of the employees; they may not, however, attempt to coerce the voters so as to deprive them of freedom of choice.

During an election campaign, the employer or the union might employ many forms of conduct in an attempt to influence the votes of the employees. In some election campaigns, the parties threaten the employees with reprisals; cajole them with the promise of benefits; or solicit their support through misrepresentations of law or fact. In several significant cases decided during the report year, the Board considered allegations involving each of these types of preelection conduct.

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[15] 272 NLRB 1318 (Chairman Dotson and Members Zimmerman and Hunter).

[16] 116 NLRB 1628 (1956).

The Board evaluates the permissibility of electioneering tactics, including threats, in terms of whether the conduct tended to prevent free employee expression.

In *Lovilia Coal Co.*,[17] a panel majority sustained an employer's objection to an election and found that third-party threats of physical abuse and property damage made during the critical period at the employer's mine created an atmosphere of fear and reprisal rendering a fair election impossible. Several weeks before the election, an employee had threatened to kill a nonunion employee and threatened to blow up the mine if it did not "go union." On the day before the election, a different employee told another of his having heard a rumor in a bar that the mine would be blown up if the union was not voted in.

The panel majority found that the seriousness of the threats established aggravated misconduct sufficient to create an atmosphere of fear and reprisal. The majority noted that threats to blow up the mine affected the entire bargaining unit. Even though the record specifically indicated only 3 employees in a unit of 28 had heard of the threat, the majority concluded that the threat had been widely disseminated and noted that a rumor of the mine's being blown up had spread to a bar where it was overheard by one employee and repeated to another on the day before the election. The majority also noted that while a union official may have quelled another rumor concerning a mass assembly at the mine on election day, it was not established that he had done so with respect to the rumor.

Member Dennis, dissenting on this point, concluded that the statements made did not rise to the level of third-party misconduct warranting the setting aside of the election, considering the context of the campaign and of the statements. She noted that the statements made were not attributable to the union, one was made in response to another employee's inflamatory remarks, and all eligible employees voted without incident.

Another election objection case, *Tri-Cast, Inc.*,[18] involved both an alleged campaign threat and alleged misrepresentation made by the employer in a letter distributed to employees. The letter contained the following paragraph:

> We have been able to work on an informal and person-to-person basis. If the union comes in this will change.
>
> We will have to run things by the book, with a stranger, and will not be able to handle personal requests as we have been doing.

Contrary to the Regional Director, the Board found this statement not to constitute a threat to take away existing employee rights. The Board explained:

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[17] 275 NLRB 1358 (Chairman Dotson and Member Hunter; Member Dennis dissenting in pertinent part).

[18] 274 NLRB 377 (Chairman Dotson and Members Hunter and Dennis).

> There is no threat, either explicit or implicit, in a statement which explains to employees that, when they select a union to represent them, the relationship that existed between the employees and the employer will not be as before. . . . Section 9(a) . . . contemplates a change in the manner in which employer and employee deal with each other. For an employer to tell its employees about this change during the course of an election campaign cannot be characterized as an objectionable retaliatory threat to deprive employees of their rights, but rather is nothing more or less than permissible campaign conduct.

The Board further rejected the Regional Director's finding that the employer's statement constituted an objectionable misrepresentation. It held that even if the letter were read to have misrepresented employee rights, under *Midland National Life Insurance Co.*[19] and its progeny, such a misrepresentation would not serve as a basis for overturning election results.

The employer's letter also contained the following two paragraphs which the Board held to be unobjectionable:

> We are still a young company fighting for new business. If we have to bid higher or customers feel threatened because of delivery cancellations (union strikes) *we lose business—and jobs.*

> We will lose the flexibility we need to ship castings and beat the competition. We cannot stay healthy with union restrictions. We are much too small.

The Board found the statements in the first paragraph to be "nothing more than the Employer's permissible mention of possible effects of unionization." The Board held that the statements in the second paragraph can only refer to possible restrictive conditions that may be sought by the [Union] in future bargaining. These restrictions are possible outgrowths of unionization, designed to assure the amount and types of work done by unit members. Because the Employer's comments reflect possible consequences of unionization, and are moderate in tone, we conclude that they are not threats of retaliatory conduct." Accordingly, the Board overruled the union's election objections.

In still another significant election objection case, *SDC Investment*,[20] the Board revised its rule concerning the use of altered reproductions of Board election ballots by parties in representation elections. In *Allied Electric Products*,[21] the Board had barred, in an election campaign, the reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered. Finding that this rule had been applied inconsistently, the Board reexamined the rule and an-

[19] 263 NLRB 127 (1982).
[20] 274 NLRB 556 (Chairman Dotson and Members Hunter and Dennis).
[21] 109 NLRB 1270 (1954).

nounced that the Board would find not objectionable an altered ballot that on its face clearly identified the party responsible for its preparation.

The Board reasoned that such a ballot would be unlikely to give voters the misleading impression that the Board favored one of the parties to the election. When the source of an altered ballot is not clearly identified, the Board indicated that it would examine the nature and contents of the material to determine whether the document had a tendency to mislead voters into believing that the Board favored one party over another.

Member Hunter noted that in making this determination he would find it appropriate to examine the circumstances of the altered ballot's circulation, as well as its nature and contents.

In applying its revised rule in this case, the Board found that a party's use of a Spanish-language hand-printed copy of the Board's sample ballot that had an additional line at the bottom stating, "Remember to vote yes on December 16th," warranted setting aside the election. The Board found that the presence of the Board seal at the top of the Spanish-language side of the leaflet and the official printed Board sample ballot in English on the reverse side did much to make the document appear official. The Board concluded that, by its nature and contents, the leaflet was likely to be perceived by voters as an official Board document and to lead Spanish-speaking voters to believe that the Board wanted them to vote "yes."

In *V.I.P Limousine*,[22] the Board found merit in the employer's objection to the deauthorization election on the ground that the unusually severe snowstorm which developed during the polling period wherein a substantial number of eligible voters did not vote was so disruptive of the entire election process that a new election must be conducted. The election, in a unit of the employer's drivers at its Stamford, Connecticut facility, was conducted on 11 February 1983. The polls were open from 12 noon until 9 p.m. to accommodate drivers on long trips and those who worked the afternoon and evening shifts.

During the afternoon, approximately 20 inches of snow fell in the Stamford area making driving extremely difficult, if not impossible. In its objection, the employer claimed, and offered 11 employee statements in support thereof, that the snow and the accompanying road conditions prevented many employees from voting. Relying on *Southland Corp.*[23] and *Versail Mfg.*,[24] the Acting Regional Director found no valid basis for setting aside the election because, despite the inclement weather, the polls were open for a substantial period of time and 75 percent of

[22] 274 NLRB 641 (Chairman Dotson and Members Hunter and Dennis).
[23] 232 NLRB 631 (1977).
[24] 212 NLRB 592 (1974).

those eligible to vote, a representative portion of the electorate, were able to cast their ballots.[25]

In reversing the Acting Regional Director, the Board noted that it is responsible for establishing the proper procedure for the conduct of its elections. One of its primary concerns in carrying out this responsibility is whether employees are given a sufficient opportunity to vote. If there is a reasonable possibility that circumstances have occurred which so affect a sufficient number of ballots as to destroy the requisite laboratory conditions under which elections must be conducted and these ballots are determinative, to maintain the Board's high standards, the election must be set aside.

Because, here, a severe snowstorm occurred around the election site during the polling period, affecting the electorate as a whole, and a substantial number of employees did not vote in the election thereby destroying the integrity of the election process itself, the Board had no alternative but to set aside the election. In reaching this conclusion, the Board found both *Southland* and *Versail* distinguishable because those cases dealt with the disenfranchisement of a single employee and not whether the election was conducted properly and in such a manner as to assure that all employees were given a sufficient opportunity to vote.

In *Heartland of Keyser*,[26] the Board majority, contrary to the hearing officer's recommendation, held that the employer's failure to remove from its bulletin board notices which had been posted prior to the implementation of a "no-posting" rule did not affect the results of the election. During the petitioner's organizational campaign the employer instituted a valid "no-posting" rule prohibiting all types of employee postings on the bulletin board. This rule was subsequently modified 3 weeks before the election to allow employee postings to remain on the bulletin board for a "reasonable" time. However, the employer never removed from the bulletin board notices, unrelated to the election, of the "no-posting" policy.

The majority found that because the employer treated antiunion literature posted no differently from prounion literature, and because prior to the election the employer had allowed all union literature to remain posted for several days, the employees had an opportunity to read the literature. Consequently, the majority concluded that the employer's failure to apply its new rules evenhandedly by not removing the bulletin board notices posted prior to 7 February (the date of the implementation of the posting policy) which did not relate to the election campaign did not warrant setting aside the election.

Member Dennis dissented and would have set the election aside based on the petitioner's objection. She noted that while

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[25] Of the approximately 89 eligible voters, 37 voted for and 30 against rescinding the union-security provision of the parties' agreement.

[26] 275 NLRB 168 (Chairman Dotson and Members Hunter; Member Dennis dissenting).

the employer removed prounion notices from the bulletin board in accord with its policies, nonunion notices were permitted to remain posted throughout. In her view, this constituted objectionable disparate enforcement of the employer's rules even though antiunion, as opposed to nonunion notices, were similarly treated.

Finally, in *Kohler Food Service*,[27] the Board, in disagreement with the Regional Director, directed a hearing on the union's objections regarding the supervisory status of two individuals. In overruling the union's objections, the Regional Director did not set forth what evidence he relied on in concluding that the individuals were not supervisors; rather, he relied on his own determination to that effect in dismissing a concurrent unfair labor practice charge.

The Board, however, noted that the union in its exceptions set forth evidence that at least one of the individuals used independent judgment directing employees, had reprimanded employees, and had released employees without checking with higher management. Under those circumstances, the Board found that it could not rely on the Regional Director's administrative conclusion in the unfair labor practice proceeding but rather must obtain all the facts concerning the individuals' supervisory status so that it could make its own determination as to whether they were supervisors.

[27] 274 NLRB 1103 (Chairman Dotson and Members Hunter and Dennis).

IV

Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in Sec. 8) affecting commerce. In general, Section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he or she might have in the matter. They are filed with the Regional Office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with the decisions of the Board during fiscal year 1985 which involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

Section 8(a)(1) of the Act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights guaranteed by Section 7 to engage or refrain from engaging in collective bargaining and self-organizational activities. Violations of this general prohibition may be a derivative or by-product of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a),[1] or may consist of any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities which constitute such independent violations of Section 8(a)(1).

1. Forms of Employee Activity Protected

The forms that protected concerted activity may take are numerous. The following cases decided by the Board provide a sample of the types of activities found to be protected.

[1] Violations of these types are discussed in subsequent sections of this chapter.

In *McEver Engineering*,[2] a Board majority found, in agreement with the administrative law judge, that an employer violated Section 8(a)(1) by discharging seven of its unrepresented employees who refused to work on top of a 65-foot to 80-foot-high lime tank until it stopped raining. The judge found that because the employees were protesting what they in good faith perceived to be unsafe working conditions, their concerted refusal to work was protected.

In adopting the judge's finding, the Board majority noted that the employer's superintendent testified that a "rain-out" would have been called but for pressure from the customer. The majority also pointed out that several employees testified that although they had worked in the rain in the past, they had never worked in such a hard rain or as high up on the tank in the rain. Thus, the majority concluded, the risks of working that day as perceived by the employees were neither inherent in the job nor assumed by them when they accepted employment.

Chairman Dotson, dissenting, would have found that the employees were engaged in an unprotected partial strike. In his view, by refusing to work until the rain stopped, the employees were attempting "'to have it both ways,' i.e., to continue being employed, but insist on working only in fair weather." Further, contrary to the majority, in his view the evidence established that working in the rain was in fact "a normal concomitant of the job," citing testimony that working conditions were never good and that employees were forewarned of this when they applied for work. Additionally, the Chairman noted, several of the employees admitted that they had worked in the rain at heights of up to 20 feet on prior occasions, and that on the day in question the employer had permitted them to take shelter in the toolhouse whenever the rain became intolerable. Thus, the Chairman concluded, this case was analogous to recent cases where the Board on similar grounds had found unprotected the refusal of an employee at a nuclear power plant to enter a radioactive pipe,[3] and the refusals of two construction employees to climb a scaffold.[4]

In *River Oaks Nursing Home*,[5] a Board majority held that an employer lawfully discharged two bargaining unit nurses for walking out in the middle of their work shift. The Board found that their walkout was unprotected because it was unauthorized and inconsistent with their union's bargaining position.

The Board majority noted that the union, then in contract negotiations, had proposed contract language calling only for joint employer and union monitoring of staffing levels and found that the nurses' parting statement—"We will be back when this place

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[2] 275 NLRB 921 (Members Hunter and Dennis; Chairman Dotson dissenting).
[3] *Daniel Construction Co.*, 264 NLRB 770 (1982).
[4] *Daniel Construction Co., International*, 267 NLRB 1213 (1983).
[5] 275 NLRB 84 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

is properly staffed"—constituted a demand for a specific (scheduled) number of nurses aides.

Member Dennis, dissenting, found that the nurses were not making inconsistent demands from those of their union, but were merely demanding replacements for absent nurses aides on their immediate shift, which was consistent with the respondent's current staffing procedure, rather than permanent staffing changes. Member Dennis concluded from the evidence that the nurses were engaged in a protected walkout in response to the respondent's unilateral changes in their conditions of employment.

In *Certified Grocers,*[6] the Board found, relying on the Supreme Court's *Emporium Capwell* decision,[7] that picketing by certain discharged employees over their discharges was unprotected. The Board found that, as in *Emporium Capwell,* the primary purpose of the picketing was to obtain direct negotiations with the employer in contravention of the existing contractual grievance-arbitration procedure.

The Board cited the fact that several of the discharged employees had hired their own attorney out of dissatisfaction with the union's efforts to resolve their discharges through the grievance-arbitration procedure; that the picketing occurred at the employer's headquarters rather than the facility where the employees had been employed; that the picket signs demanded immediate reinstatement pending arbitration; and that the picketing continued even after the union requested that it cease. Accordingly, as the picketing was unprotected, the Board concluded that the employer did not violate Section 8(a)(1) by threatening to deny the discharged employees reinstatement unless they ceased picketing.

Members Zimmerman and Dennis, in *Business Services by Manpower,*[8] found that a temporary employment agency violated Section 8(a)(1) when it discharged two employees for honoring the picket line at a bakery to which the employees had been assigned. The majority held that the right to honor a union's picket line is a right created and protected by the Act, that the Board has not distinguished between lines at the facilities of the employees' own employer and picket lines at other facilities where the employees may be required to work ("stranger" picket lines), and that no such distinction is warranted.

In dissent, Chairman Dotson would not have found a violation. In his view, the type of conduct of the two employees, although protected, is outweighed by the respondent's business considerations. The Chairman noted that there is no coherent body of case law settling the issue of whether refusals to cross stranger picket lines are protected by the Act and that he would find the refusal to cross a stranger picket line, although protect-

[6] 273 NLRB 1608 (Chairman Dotson and Members Hunter and Dennis).
[7] *Emporium Capwell Co. v. Western Addition Community Organization,* 420 U.S. 50 (1975).
[8] 272 NLRB 827 (Members Zimmerman and Dennis; Chairman Dotson dissenting).

ed, is entitled to less weight when balanced against valid employer considerations than refusal to cross a picket line at an employee's own place of employment. The Chairman concluded that, in this case, "the employer's interest in ensuring that work assignments are performed reliably far outweighs the vague and attenuated interests of individual employees in promoting 'union solidarity.'"

In *D. A. Collins Refractories,*[9] a Board majority of Members Dennis and Hunter reversed the administrative law judge's finding that the respondent employer violated Section 8(a)(1) and (3) by failing to recall employee Donald Addis because he filed for state unemployment benefits and because he was not a union member. The Board further held that the respondent violated Section 8(a)(1) by maintaining and enforcing a policy of refusing to recall from layoff employees who filed for state unemployment benefits. Member Zimmerman dissented.

Addis was laid off in 1982 and applied for state unemployment benefits in July and September of that year. The employer subsequently began to recall employees but did not recall Addis. There was no dispute that the respondent maintained and enforced a policy of refusing to recall employees who filed for unemployment and that it refused to recall Addis because of his unemployment benefits claim.

The judge, applying *Self Cycle & Marine Distributor Co.*,[10] found that Addis was engaged in protected concerted activity when he pursued his unemployment benefits claim and that the respondent violated Section 8(a)(1) by refusing to recall him because of that activity. The judge also found that the respondent's maintenance and enforcement of the no-recall policy independently violated Section 8(a)(1).[11]

Members Dennis and Hunter reversed. Relying on *Meyers Industries,*[12] they held that *Self Cycle & Marine Distributor Co.*, cited by the judge, was no longer good law. Under *Meyers*, they held, an employee's pursuit of state unemployment benefits is not concerted activity. Thus, the respondent did not violate the Act by refusing to recall Addis because he filed such a claim.

Regarding the legality of the respondent's policy on recall, they found that "[b]ecause the Respondent's rule is aimed at and has only been applied to activities that are not concerted, the policy does not violate Section 8(a)(1)." (272 NLRB at 932.) They went on to note that "[t]he filing for benefits is an intrinsically individual act and remains so even if a group of employees simultaneously file separate claims." (272 NLRB at 932 fn. 2.)

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[9] 272 NLRB 931 (Members Dennis and Hunter; Member Zimmerman dissenting).

[10] 237 NLRB 75 (1978).

[11] The judge predicated his 8(a)(3) finding on an admission in the respondent's original answer to the complaint which was later omitted in an amended answer.

[12] 268 NLRB 493 (1984).

Accordingly, they said, "Our finding . . . is squarely within *Meyers Industries*."[13]

In his dissent, Member Zimmerman noted that he had dissented in *Meyers* but found here that (272 NLRB at 933):

> I disagree that *Meyers Industries* has anything to do with the determination of the lawfulness of the Respondent's rule on unemployment claims, and because the Respondent's refusal to recall Addis cannot be considered apart from the Respondent's general rule, I do not find that *Meyers Industries* controls any issue in this case.

Member Zimmerman argued that "unemployment compensation is not a purely individual matter, but instead falls within the broad category of wages, hours, and other terms and conditions of unemployment." In this case, "the Respondent's rule makes it a condition of continued employment that employees not file unemployment claims. . . . Any possible question concerning the protected character of unemployment claims, therefore, has been put to rest by the Respondent's rule." (Ibid.) Thus, although the respondent's action against Addis, taken alone, is lawful under *Meyers* (id. at 933–934):

> [t]he Respondent's refusal to recall Addis does not stand alone. It occurs against the background of a general rule proscribing unemployment claims. In this context, the refusal to recall may interfere with the exercise of protected rights, even through Addis, himself, was not engaged in protected activity. . . . The Respondent's enforcement of the rule against Addis not only discourages and interferes with the individual claims but also with any group employee action that might otherwise occur concerning unemployment claims.

2. Representation by Stewards at Interviews

Section 9(a) of the Act, which provides for exclusive representation of employees in an appropriate bargaining unit, contains the following proviso:

> *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

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[13] The 8(a)(3) finding also was dismissed because, except for the admission in the original answer that was amended, there was no evidence that Addis' union status played any role in the decision not to recall him. The dissent did not address this issue.

In two cases during the 1975 report year—*Weingarten* and *Quality*[14]—the Supreme Court upheld the Board's determination that Section 7 of the Act gives an employee the right to insist on the presence of his union representative at an investigatory interview which he reasonably believes will result in disciplinary action. The Court concluded that the Board's holding "is a permissible construction of 'concerted activities . . . for mutual aid or protection' by the agency charged by Congress with enforcement of the Act.[15]

During the report year, the Board had occasion to apply the principles set forth in *Weingarten* and *Quality* in a number of cases, including the following two that are summarized.

In *Sears, Roebuck & Co.*,[16] the Board held that *Weingarten* rights are inapplicable when there is no certified or recognized union, thus overruling a Board majority decision in *Materials Research Corp.*[17] which had extended such rights to unrepresented employees. In *Sears*, the majority found its holding to be compelled by the statute, i.e., "pursuant to Section 9 and related provisions of our Act, a duly recognized or certified union is vested with the exclusive authority to represent unit employees and deal with the employer on all matters involving terms and conditions of employment, including wages, hours, benefits, and *discipline*" but "when no union is present, an employer is entirely free to deal with its employees on an individual, group, or wholesale basis." The majority emphasized, "Importantly, the freedom to deal individually spans all terms and conditions of employment, including the potential or actual imposition of discipline." (Id. at 230–231.)

Member Hunter concurred in the result, finding that extension of *Weingarten* rights to unrepresented employees is a permissible but not a reasonable construction of the Act.

In *Prudential Insurance Co.*,[18] the Board overruled *Prudential Insurance Co.*[19] (*Prudential I*), and vacated its earlier decision,[20] which had relied on *Prudential I*, holding that a union can waive employees' *Weingarten* rights and that the union had waived those rights in this instance.

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[14] *NLRB v. J. Weingarten*, 420 U.S. 251; *Ladies Garment Workers v. Quality Mfg. Co.*, 420 U.S. 276.

[15] In *Weingarten*, the Supreme Court found that the right to union representation inheres in the Sec. 7 right to act in concert for mutual aid and protection; arises only in situations where the employee requests representation; applies only to situations where the employee reasonably believes the investigation will result in disciplinary action; may not be exercised in a manner which interferes with legitimate employer prerogatives and the employer need not justify its refusal, but may present the employee with a choice between having the interview without representation or having no interview; and imposes no duty upon the employer to bargain with any union representative attending the investigatory interview.

[16] 274 NLRB 230 (Chairman Dotson and Member Dennis; Member Hunter concurring).

[17] 262 NLRB 1010 (1982) (Members Fanning, Jenkins, and Zimmerman; Chairman Van de Water and Member Hunter concurring and dissenting).

[18] 275 NLRB 208 (Chairman Dotson and Members Hunter and Dennis).

[19] 251 NLRB 1591 (1980), enf. denied 661 F.2d 398 (5th Cir. 1981).

[20] 254 NLRB 247 (1981).

As was the case in *Prudential I*, the employer denied employees' requests for union representation at investigatory interviews that the employees reasonably believed could result in their discipline, relying on a clause in the collective-bargaining agreement that provided:

> The union further agrees that neither the union nor its members shall interfere with the right of the employer:
>
> . . . .
>
> (b) To interview any Agent with respect to any phase of his work without the grievance committee being present.

The Board found the threshold issue to be "whether a union can waive employees' *Weingarten* rights." Relying on *Metropolitan Edison Co. v. NLRB*,[21] the Board (275 NLRB at 209) noted that a union may waive employees' statutory rights:

> [U]nions are charged with serving the entire bargaining unit and therefore may choose to bargain away certain statutory protections in order to secure other gains. As a result, even "individual rights may be waived by the union so long as the union does not breach its duty of good-faith representation." [Citing *Metropolitan Edison*, supra at 706–707 fn. 11.]

It stated further (ibid.):

> [A]lthough the *Weingarten* right is triggered only by an employee's request, and although that employee alone may have an immediate stake in the outcome of the interview, it is clear that the exclusive bargaining representative also has an important stake in the process. Consequently, because the union's duty of fair representation allows for flexibility in collective-bargaining negotiations with the employer, the *Weingarten* right, like the right to strike, is subject to being waived by the union.

The Board next found that "the contract clause at issue constitutes a clear and unmistakable waiver of the unit employees' *Weingarten* rights." (Ibid.) It noted that from the clause's inception in 1956 "the respondent has maintained that the clause allows it to conduct investigatory interviews without the presence of a union representative." (Ibid.)

The Board also rejected the view of the earlier decisions that the clause was not a waiver because the clause predated the court's *Weingarten* decision, referred to a grievance committee rather than to a representative, and the union had consistently tried to negotiate the clause out of the agreement. In so doing, the Board found that the clause "appears to have been consistently applied to investigatory interviews. Thus, the clause is clearly applicable to *Weingarten* rights." (Id. at 210.)

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[21] 460 U.S. 693 (1983).

3. Employer Assistance in Decertification Petition

In *Eastern States Optical Co.*,[22] a panel majority reversed an administrative law judge's determination that the employer violated Section 8(a)(1) by "approving" a decertification petition and "rendering advice and assistance" in its preparation and circulation.

The employer and the union were parties to a collective-bargaining agreement that expired on 25 September 1981. In June of that year, employees Rosenberg and Dixon discussed their desire to decertify the union. In July, Rosenberg began preparation of the petition but was unsure of the language to use. Rosenberg telephoned the employer's attorney, Bluestone, who Rosenberg testified was the only attorney he knew. Rosenberg told Bluestone the employees were seeking to decertify the union and that he had some questions concerning the petition's wording. Bluestone told Rosenberg that he should contact the NLRB (which Rosenberg, in fact, did) and also provided "some assistance to Rosenberg in wording the petition." Rosenberg subsequently sent Bluestone a copy of the petition which Bluestone mailed back to Rosenberg without comment or change. Meanwhile, Bluestone told the respondent's vice president, Shyer, about the petition.

Rosenberg and Dixon secured the signatures of six of the eight unit employees on the petition. The employer played no role in securing the signatures and there was no evidence that Rosenberg discussed his conversation with Bluestone with any of the employees who signed the petition.

At some point, Rosenberg again telephoned Bluestone stating that he needed to know the employee unit, the names of the employer's officials, and whether six signatures were sufficient. Bluestone told Rosenberg the unit description in the collective-bargaining agreement, the names of the officials, and stated that he believed six signatures were sufficient.

On 21 July Rosenberg submitted the petition to Shyer, who, based on the petition, withdrew recognition from the union by letter. After receiving Shyer's letter, Union President Fazio visited the employer's premises where he asked employee Cammock if she was aware of the petition. Cammock said she was not. The next day Cammock approached Shyer and told him she had learned of the petition and said, "I might as well sign myself." Shyer said he would get the petition later that day and Shyer called Cammock into his office where she signed the petition.

The majority set forth the appropriate legal standard to be applied, noting that (275 NLRB at 372):

> [I]t is unlawful for an employer to initiate a decertification petition, solicit signatures for the petition, or lend more than minimal support and approval to the securing of signatures and

[22] 275 NLRB 371 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

the filing of the petition. In addition, while an employer does not violate the Act by rendering what has been termed "ministerial aid," its actions must occur in a "situational context free of coercive conduct." In short, the essential inquiry is whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." [Citing *KONO–TV–Mission Telecasting*, 163 NLRB 1005, 1006 (1967).].

Applying this standard, the majority found that the employer "played no role in [the] decision to initiate decertification proceedings. [That it] . . . did not solicit any signatures for the petition and that, with the exception of Bluestone's dealings with Rosenberg and Shyer's with Cammock . . . no respondent representative discussed or even mentioned the petition to any employee." (Ibid.)

Regarding Bluestone's "editorial aid," the majority found that "although he may have acted unwisely, his actions did not rise to the level of unlawful assistance" because Rosenberg initiated the contacts on his own volition, Bluestone "said nothing to encourage or otherwise foster the process," and "Bluestone did nothing more than render editorial suggestions and supply readily available factual information." The majority stated that "[i]n similar circumstances, the Board has found no unlawful assistance," citing *KONO-TV-Mission Telecasting*, supra; *Poly Ultra Plastics*,[23] and *Consolidated Rebuilders*.[24]

Regarding Shyer's actions in allowing Cammock to sign the petition, the majority found no unlawful assistance because "Shyer did nothing more than accede to an employee's voluntary request to sign a petition lawfully in his possession which had already served as a basis for the withdrawal of recognition from the Union." (274 NLRB at 373.)

In dissent, Member Dennis stated (ibid.):

> I agree with the judge's finding that the Respondent's attorney, with the Respondent's knowledge, unlawfully assisted in preparing the decertification petition. I also agree that the Respondent displayed an active interest in the petition's progress and employees were aware of the interest. The Respondent's conduct constitutes more than mere ministerial aid; indeed, as the judge reasons, without the Respondent's assistance the petition might not have been filed. I would find that the Respondent's assistance in preparing the petition and interest in its progress interfered with employees' Section 7 rights. See *Seward International*, 270 NLRB 1034 (1984); *Condon Transport*, 211 NLRB 297 (1974).

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[23] 231 NLRB 787 (1977).

[24] 171 NLRB 1415 (1968).

4. Discharge for Strike Misconduct

In *Georgia Kraft Co.*,[25] the Board considered the issue of whether certain verbal threats made by strikers against a nonstriking employee constituted misconduct which justified their discharge.

Two striking employees visited the nonstriker at his home about 2 weeks after the strike began. They spoke to the nonstriker through his front door. His pregnant wife and young daughter were also present. The nonstriker noticed that they had been drinking and asked them to leave, but they refused to go. The two employees asked the nonstriker why he went back to work, and said the union could fine him. Although he denied that he was a union member, the strikers contradicted this assertion and claimed that he was "screwing them out of their God damn money." The nonstriker asked them not to curse in front of his daughter and again asked them to leave. One of the strikers said he would "take care of" the nonstriker if he went back to work, and when the nonstriker asked what he meant, the other striking employee laughed and repeated the same threat. After repeated requests that they go, the two employees finally left.

In an earlier decision,[26] the Board reversed the administrative law judge and found that the employer violated Section 8(a)(1) by discharging the two employees. The earlier decision concluded that the employees' remarks about "taking care"of the nonstriker were ambiguous, and that their conduct was an isolated incident, unaccompanied by physical gestures or violence, and thus was not sufficiently serious to warrant discharge.

The U.S. Court of Appeals for the Eleventh Circuit enforced the Board's decision, and the Supreme Court granted certiorari. While the case was pending before the Supreme Court, however, the Board issued its decision in *Clear Pine Mouldings*,[27] which adopted a new standard for finding strike misconduct warranting the denial of reinstatement based on verbal threats. In *Clear Pine Mouldings*, the Board decided to reject the per se rule that words alone can never warrant a denial of reinstatement in the absence of physical acts and decided to apply an objective test to determine whether, under the circumstances, the misconduct is such that it may reasonably tend to coerce or intimidate employees in the exercise of rights protected by the Act.[28] The Board overruled the initial *Georgia Kraft* decision to the extent that it was inconsistent with this new standard.[29] The Supreme Court re-

[25] 275 NLRB 636 (Chairman Dotson and Members Hunter and Dennis).

[26] *Georgia Kraft Co.*, 258 NLRB 908, 912–913 (1981), enfd. 696 F.2d 931 (11th Cir. 1983), cert. granted 464 U.S. 981 (1983), vacated and remanded 466 U.S. 901 (1984).

[27] 268 NLRB 1044 (1984).

[28] The Board thus adopted the test formulated by the Third Circuit in *NLRB v. W. C. McQuaide, Inc.*, 552 F.2d 519, 527–528 (1977).

[29] *Clear Pine Mouldings*, 268 NLRB 1044 at fns. 8 and 14.

manded *Georgia Kraft* to the Eleventh Circuit with instructions to remand the case to the Board for reevaluation in light of *Clear Pine Mouldings*.[30]

On remand, the Board reversed its earlier conclusion and found that the employer did not violate the Act by discharging the two striking employees. Applying the *Clear Pine Mouldings* standard, the panel found that the two strikers engaged in misconduct that reasonably tended to coerce or intimidate the nonstriker in the exercise of his protected right to refrain from striking. The Board concluded that their statements that they would "take care of" the nonstriker were not ambiguous, but were threats of bodily harm. The Board also found that the surrounding circumstances were coercive and intimidating, including the fact that the two employees made the threats at the nonstriker's home, in the presence of his pregnant wife and young daughter, in a drunken state, and while refusing numerous requests to leave. The Board concluded that such intimidating conduct directed at an employee who is exercising his protected right to refrain from striking is not protected by the Act.

B. Employer Assistance to Labor Organization

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

In *Kroger Co.*,[31] the Board found that the respondent violated Section 8(a)(1) and (2) of the Act by recognizing and entering into a contract with the union before it had employed a substantial and representative complement of its work force. The Board further found, however, that the respondent cured this violation when shortly thereafter it informed the union that it could not recognize the union and that the contract could not be effective until the union could prove that it represented a majority of all the employees.

The respondent also informed each new employee at the time of hiring that he did not have to join a union or work under a union contract, and that he would be employed without regard to whether he joined a union. The Board found that such conduct constituted an effective repudiation under the standards set forth in *Passavant Memorial Hospital*.[32]

Member Dennis dissented from the majority's holding that the employer effectively cured its 8(a)(1) and (2) violation. She stated the employer failed to dispel in a clear and unequivocal manner the impression that it recognized the union and detailed how the respondent's alleged repudiation was inadequate in sev-

[30] 466 U.S. 901 (1984).
[31] 275 NLRB 1478 (Chairman Dotson and Member Hunter; Member Dennis dissenting).
[32] 237 NLRB 138 (1978).

eral respects. She said the respondent's conduct, at best, created uncertainty whether the union still was being recognized.

C. Employer Discrimination Against Employees

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. Many cases arising under this section present difficult factual, but legally uncomplicated, issues concerning employer motivation. Other cases, however, present substantial questions of policy and statutory construction, as in the cases that follow.

1. Discipline of Sympathy Strikers

During the report year, the Board had occasion to consider the question whether a contractual no-strike provision waives employees' right to engage in sympathy strikes.

In *Indianapolis Power Co.*,[33] an employee engaged in a sympathy strike and was disciplined by the employer. Relying on Board precedent, the administrative law judge determined that the employer violated Section 8(a)(1) and (3) of the Act because the contractual no-strike provision did not expressly prohibit sympathy strikes and extrinsic evidence did not establish that the parties clearly intended to waive employees' statutory right to engage in sympathy strikes.

The Board reversed, holding that "a broad no-strike prohibition encompasses direct and indirect work stoppages, including sympathy strikes." (Ibid.) The Board found no logical or practical basis in previous Board decisions excepting sympathy strikes from broad no-strike clauses that failed to include the word "sympathy." In construing contractual provisions that prohibit strikes, the Board stated it will read the language plainly and literally as prohibiting all strikes unless the contract itself, or extrinsic evidence, shows that the parties intended to except sympathy strikes from the no-strike provision. If such intent is demonstrated, the Board will accord it controlling weight.

The Board overruled *United States Steel*[34] and *W-I Canteen Service*[35] to the extent they conflict with the *Indianapolis Power* holding.

Applying its holding to the no-strike provision before it, the Board noted that the "provision prohibits 'strike[s], picketing . . . or other curtailment of work'" and concluded that the language did not suggest an intent to exclude sympathy strikes. Further, neither the parties' bargaining history nor conduct estab-

[33] 273 NLRB 1715 (Chairman Dotson and Members Hunter and Dennis).

[34] 264 NLRB 76 (1982) (former Chairman Van de Water and Member Hunter dissenting), enf. denied 711 F.2d 722 (7th Cir. 1983).

[35] 238 NLRB 609 (1978), enf. denied 606 F.2d 738 (7th Cir. 1979).

lished such an intent. Accordingly, the Board held that the no-strike provision "clearly and unmistakably" waived the right to participate in sympathy strikes and the employer was free to suspend its employee and threaten him with discharge for his refusal to cross a stranger picket line.

In a related case, *Arizona Public Service Co.*,[36] the employer suspended employees who had engaged in a sympathy strike and threatened to sue the union under the parties' no-strike provision, which held the union liable for unauthorized work stoppages unless it gave written notice the stoppage was in fact unauthorized and cooperated with the employer in getting the employees to return to work. The administrative law judge found the union had not waived employees' right to participate in sympathy strikes and therefore concluded the employer violated Section 8(a)(1) and (3) of the Act by disciplining the sympathy strikers. The Board reversed, holding that the contract permitted the discipline.

The Board found that the parties' contract recognized the employer's right to levy discipline against employees who engaged in "any unauthorized stoppage, strike, intentional slowdown, or suspension of work," and that the union had given written notice to the employer that the sympathy strike was unauthorized. Consequently, the Board concluded that the contract allowed the employer to levy discipline under those circumstances, and dismissed the complaint. The Board noted that under *Indianapolis Power Co.*,[37] which issued concurrently, a general no-strike clause waives the employees' right to engage in sympathy strikes, absent contrary extrinsic evidence.

2. Disciplining Union Stewards

In *Indiana & Michigan Electric Co.*,[38] the Board disagreed with the administrative law judge's conclusion to the effect that holding union stewards to a higher standard of conduct than other rank-and-file employees in an unauthorized work stoppage violated Section 8(a)(3) and (1). It noted that the Supreme Court had recently considered the issue of disparate discipline in *Metropolitan Edison*.[39]

The Board viewed the Court as holding that an employer may impose greater discipline on union officials only when the collective-bargaining agreement and circumstances surrounding the collective-bargaining relationship indicate the union has waived its officials' Section 7 rights to the extent that the officials have an affirmative duty to prevent illegal work stoppages. In the Board's view, the Court left open the question of what contractual language would suffice to constitute such a waiver, although

[36] 273 NLRB 1757 (Chairman Dotson and Members Hunter and Dennis).
[37] 273 NLRB 1715 (1985).
[38] 273 NLRB 1540 (Chairman Dotson and Members Hunter and Dennis).
[39] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983).

the Court had held that the general "no-strike" language in that case was not enough.

The Board found that the contract provision involved in *Indiana & Michigan Electric*, which required, inter alia, that the union disavow publicly an unlawful strike and take whatever affirmative action is necessary to bring about a quick termination of such a strike, unequivocally imposed an affirmative duty to take steps to terminate the unlawful walkout. Because the union stewards not only took no action to halt the work stoppage but actually participated in it, the Board found they had not fulfilled their contractual obligation even under the most narrow construction of this contract.

The Board thus concluded it did not need to speculate about what particular language would be necessary to require those union officials to take particular actions. Moreover, it found that because the union had clearly assumed the duty to attempt to prevent unlawful strikes, it thereby waived its employee officers' Section 7 protection from the employer's disparate discipline for failure to do so.

D. Employer Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to Section 9(a), have a mutual obligation to bargain in good faith about wages, hours, and other terms and conditions of employment.[40] An employer or labor organization respectively violates Section 8(a)(5) or Section 8(b)(3) if it does not fulfill its bargaining obligation.

1. Subcontracting

In *Garwood-Detroit Truck Equipment*,[41] the Board considered whether the employer had a duty to bargain with the union about its decision to subcontract unit work to an independent contractor.

The employer was in the business of mounting and servicing equipment on trucks and also selling parts. Business had been declining for several years and three of its four remaining employees were on layoff status when the employer was approached by two individuals about the possibility of their taking over the mounting and service work.

The employer agreed to lease its facilities and equipment to these individuals as part of an agreement to retain them as an

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[40] The scope of mandatory collective bargaining is set forth generally in Sec. 8(d). It includes the mutual duty of the parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party . . ." However, neither party is compelled to agree to a proposal or to make a concession.

[41] 274 NLRB 113 (Chairman Dotson and Member Hunter, Member Dennis dissenting in part).

"independent contractor" to provide services for the employer's customers. In letters to the employees and the union, the employer advised that it was eliminating the service and mounting departments "in order to prevent economic chaos." The union protested that the employer was violating the collective-bargaining agreement. One of the employees went to work for the independent contractor.

The administrative law judge found the case was controlled by *Fibreboard Corp. v. NLRB*,[42] and therefore ruled the employer had a duty to bargain over its decision to subcontract unit work inasmuch as the employer merely replaced its own employees with those of an independent contractor to do the same work, using the same equipment, and in the same working area. The Board panel majority disagreed.

Applying the test set forth in *Otis Elevator Co.*,[43] the panel majority determined that the employer had no duty to bargain about its subcontracting decision because that decision turned not on labor costs but on a significant change in the nature and direction of the employer's business, i.e., an abandonment of its service and mounting departments. The panel majority found, in this regard, that the employer's essential purpose in executing the agreement with the independent contractor was to reduce its overhead costs across-the-board to remain in business. This purpose was evidenced in the following: the agreement itself, which provided that the contractor would pay a percentage of the employer's rent and utility bills and procure insurance for the benefit of the employer; in the reasons expressed in the employer's letters to the employees and the union; and in the testimony at the hearing, which indicated that the employer had become a "manufacturer's representative-type of organization" that sold parts and used vendors to perform the labor.

Member Dennis, dissenting in part, disagreed with the majority's conclusion that the employer had no duty to bargain with the union about the subcontracting decision itself.[44] Applying the two-step test set forth in her concurring opinion in *Otis Elevator*, Member Dennis found that (1) the union could have made offers that could have affected the decision and therefore the decision was amenable to resolution through the bargaining process; and (2) the same work was still being provided at the same location to the same customers and therefore the benefits of bargaining would outweigh any burdens placed on the employer.

In a similar case, *Griffith-Hope Co.*,[45] the Board was presented with the issue of whether an employer violated Section 8(a)(5)

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[42] 379 U.S. 203 (1964).

[43] 269 NLRB 891 (1984).

[44] The entire panel approved the judge's finding that the employer unlawfully failed to bargain about the effects of the subcontracting decision on unit employees.

[45] 275 NLRB 487 (Chairman Dotson and Member Hunter; Member Dennis concurring).

by deciding to subcontract unit work without first bargaining with the union. The employer had informed its bank that it had implemented a subcontracting program because "employee wages and past-negotiated benefits continue to be the most expensive cost item we have. This fact is so apparent that we have concluded we simply cannot afford the luxury of all that in-house labor. . . . The entire program of subcontracting . . . will be continued to substantially reduce these employee-related costs."

Applying their plurality opinion in *Otis Elevator Co.*, Chairman Dotson and Member Hunter found that the employer's decision to subcontract was a mandatory subject of bargaining because the employer had indicated that its decision to subcontract unit work turned on labor costs within the meaning of *Otis Elevator* and the employer viewed the subcontracting program as a temporary one that did not effect a fundamental change in the nature of its operation. Accordingly, the majority found that the employer violated Section 8(a)(5) when it made the decision to subcontract without fulfilling its obligation to bargain first with the union.

Member Dennis separately concurred with the majority's finding that the employer's decision to subcontract without bargaining with the union violated Section 8(a)(5). Applying the two-step test set forth in her concurring opinion in *Otis*, she found that the employer's decision was "amenable to resolution through the bargaining process" as labor costs were a significant consideration in the decision to subcontract. She further concluded that the benefit for the collective-bargaining process outweighed any burdens placed on management because the employer's decision did not represent a significant change in business operations nor did the evidence establish the presence of any other burden elements such as a need for speed or confidentiality.

2. Bankruptcy

In *Dunmyre Motor Express*,[46] the respondent, via a multiemployer group, entered into a collective-bargaining agreement with the charging party. During the term of this contract, the respondent filed a petition under Chapter 11 of the Bankruptcy Code and was designated as debtor-in-possession. The respondent stipulated that subsequent to filing its bankruptcy petition, unilateral changes were implemented, seven employees were laid off, and work was subcontracted.

In relying on the Supreme Court's decision in *NLRB v. Bildisco & Bildisco*,[47] that unilateral rejection or modification of a

[46] 275 NLRB 299 (Chairman Dotson and Members Hunter and Dennis).
[47] 465 U.S. 513 (1984).

collective-bargaining agreement after the bankruptcy petition is filed but before the bankruptcy court approves rejection is not an unfair labor practice, the Board found that the respondent's post-bankruptcy petition conduct did not violate the Act.

3. Relocation

In *Hawthorn Mellody, Inc.*,[48] the Board majority found, contrary to the administrative law judge, that an employer which had lost 50 to 70 percent of its business did not violate Section 8(a)(5) by failing to bargain over its decision to relocate. The judge found that, under the Board's *Otis Elevator* decision,[49] the employer had a duty to bargain because no fundamental change in its operation occurred, and because labor costs were "a motivating factor" in the decision.

With respect to the former, the judge found that, despite the employer's professed intent to move its Cleveland-based delivery operation to Sharpsville, Pennsylvania, it continued to "slip-seat" deliveries into the Cleveland area from a nearby truckstop after closing the Cleveland facility. With respect to the latter, the judge cited the vice president's statement to an employee before the facility closed that the employees were working too much overtime.

Reversing the judge, the Board majority found that the employer's slip-seating operation was merely a temporary measure to accommodate its drivers until they were financially able to relocate to Sharpsville. The majority cited the fact that the drivers had been told they would have to relocate to Sharpsville, and that two of the six drivers had already done so. Further, the majority noted that under *Otis Elevator*, labor costs must be more than merely "a motivating factor" in the decision; rather, the decision must "turn upon" labor costs for a bargaining obligation to attach. Noting that the employer's decision here was prompted by the loss of 50 to 70 percent of its Cleveland business, the majority found that the decision turned instead upon a change in the nature or direction of the business, and accordingly that the employer had no duty to bargain.

Concurring in the majority's finding that the employer had no duty to bargain, Member Dennis emphasized that the underlying reason prompting the decision—the loss of the Cleveland business—was outside the union's control. Even assuming labor costs were a consideration, she noted, that factor was not a significant consideration in the decision to relocate. Thus, she concluded, "the union was in no 'position to lend assistance or offer concessions that reasonably could affect . . . the employer's decision.'"[50]

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[48] 275 NLRB 339 (Chairman Dotson and Member Hunter, Member Dennis concurring and dissenting in part).

[49] 269 NLRB 891 (1984).

[50] Citing her separate opinion in *Otis Elevator*, supra, 269 NLRB at 897.

4. Union Access

In *Holyoke Water Power Co.*[51], the Board found that the employer was obliged to grant a union hygienist access to its fan room for a reasonable period sufficient to observe and survey the noise levels existing there.

There was no question that the fan room was very noisy. The employer provided earmuffs for those who entered the room and posted notices warning that the fan room was a high-noise area and that hearing protection must be worn. Although no employees worked there full time, certain employees periodically entered the room to perform maintenance and repair work.

The union requested that its hygienist be granted access to the fan room to survey potential health and safety hazards. The employer denied the union's request, but gave the union a summary of an overall noise survey not specifically covering the fan room. Later, the employer supplied the union with the results of a fan room noise-level reading taken by the employer's test coordinator.

While agreeing with the judge's finding that the employer violated Section 8(a)(5) by denying access to the union's hygienist, the Board disagreed with the judge's analysis of this issue. In so doing, the Board overruled *Winona Industries,*[52] to the extent that it held that requests for access to survey for safety hazards are tantamount to requests for information and that access cannot be denied when it is shown that the information sought is relevant to the union's performance of its representation duties. Instead, the Board held that the right of employees to be responsibly represented by the labor organization of their choice must be balanced against the right of the employer to control its property and ensure that its operations are not interfered with.

Citing *Babcock & Wilcox,*[53] the Board noted that accommodation between the two rights must be obtained with as little destruction of one as is consistent with the maintenance of the other. The Board held (273 NLRB at 1370):

> Where it is found that responsible representation of employees can be achieved only by the union's having access to the employer's premises, the employer's property rights must yield to the extent necessary to achieve this end. However, the access ordered must be limited to reasonable periods so that the union can fulfill its representation duties without unwarranted interruption of the employer's operations. . . . [W]here it is found that a union can effectively represent employees through some alternate means other than by entering on the employer's premises, the employer's property rights will predominate, and the union may properly be denied access.

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[51] 273 NLRB 1369 (Chairman Dotson and Members Hunter and Dennis).
[52] 257 NLRB 695 (1981).
[53] 351 U.S. 105 (1956).

Applying this analysis to the instant case, the Board found that the employer's property rights were outweighed. First, it noted that health and safety data was relevant to the union's representation duties and that it was common knowledge that exposure to excessive noise presented potential health hazards. The Board also noted that it was undisputed that the fan room was very noisy. Thus, the Board concluded that the employees' right to responsible representation entailed the union's obtaining accurate noise level readings for the fan room, and that the employer's property rights must yield to the extent necessary to enable the union hygienist to independently conduct noise level tests.

The Board pointed out that the fan room was not a production area and that no employees worked there full time, and that, therefore, the presence of a union hygienist would occasion little, if any, interference with production. It said the alternate information supplied to the union by the employer was insufficient to meet the union's purposes.

The Board further found that the employer's willingness to let the union's business agent enter the fan room also was insufficient absent evidence that the business agent was qualified to perform the tests and evaluate the results. The Board, however, restricted the access ordered to "a reasonable period" sufficient to allow the hygienist to fully observe and survey noise-level hazards.

In *National Broadcasting Co.*,[54] the Board considered whether the employer was obligated to afford the union access to its facilities for the purpose of obtaining information.

The judge found that the union was entitled to unlimited access to the employer's facilities and therefore the employer unlawfully denied the union's request to have a field representative observe operations in the employer's "remote" facilities at a golf tournament. In so finding, the judge applied a balancing test under which, once the relevance of the information and the need for access is established, the union is entitled to such access unless the employer can establish that such access is unreasonable.

The Board agreed with the judge's finding of a violation,[55] but stated its own reasons. The Board applied the balancing test set forth in *Holyoke Water Power Co.*,[56] which seeks to accommodate both the employer's common law right to control its property and the employees' right to representation by their union.

The Board agreed with the judge that the information sought by the union, i.e., whether the producer was performing certain "cueing" or command functions of the director and associate di-

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[54] 276 NLRB 118 (Chairman Dotson and Members Johansen and Babson).

[55] The Board reversed, however, the judge's additional finding that the employer's denial of access constituted a unilateral change in working conditions in violation of Sec. 8(a)(5) and (1).

[56] 273 NLRB 1369 (Chairman Dotson and Members Hunter and Dennis).

rector, clearly was relevant to a pending arbitration on the subject as well as to the union's general purpose of policing its collective-bargaining agreement.

Regarding the manner in which such information could be obtained, the Board agreed with the judge's observation that the use of a headset outside the remote facility would not enable the union representative to detect visual cueing at all and that even verbal cueing would be difficult to detect. Regarding the limited access proposed by the employer, the Board agreed with the judge that allowing the union access only when the remote facilities were not in operation was equivalent to not allowing access at all, and that there was no showing that the mere presence of a union representative during a live broadcast or taping would cause any interference with production.

Under these circumstances, the Board found that, on balance, the employees' representational interests outweighed the employer's property rights. The Board disagreed with the judge, however, that the union was entitled to unlimited access. It therefore modified the judge's order to limit the access granted to "reasonable times and places sufficient to allow the union to fulfill its representational duties."

In *Washington Gas Light Co.*,[57] a Board panel considered whether the employer was required to furnish the union with employees' disciplinary records which the union requested in preparation for an arbitration hearing concerning another employee's discharge. The employer refused the union's request, stating that the employees' files were confidential and that the union could only see the files if it received a waiver from the employees involved or reviewed the files with the employees. The union rejected the employer's proposed alternative access to the files.

The administrative law judge found that the requested disciplinary records were relevant. However, he found, citing the Supreme Court's rationale in *Detroit Edison*,[58] merit to the employer's confidentiality claim and recommended dismissing the complaint.

The Board agreed with the administrative law judge's finding that the information requested by the union was relevant to the handling of the grievance. However, contrary to the administrative law judge, the Board found that the employer had failed to prove that its general confidentiality claim with respect to all material in the employees' personnel files outweighed the union's need for the requested information. It noted that there was no evidence of a clear past practice or policy of confidentiality inasmuch as the employer never informed the employees that the files were confidential; the employees had not requested confi-

[57] 273 NLRB 116 (Members Zimmerman, Hunter, and Dennis).
[58] 440 U.S. 301 (1979).

dentiality; and the employer's own officials had free access to the files.

The Board also recognized that the normal practice in private arbitration is to compare employees' work records in deciding whether the contested discipline was discriminatory. Consequently, it found the case to be fundamentally different from *Detroit Edison*, supra. The Board further stated that it had repeatedly rejected blanket confidentiality claims as an inadequate defense for an employer's per se refusal to furnish any information from an employee's file.

Finally, even though the disciplinary records contained some confidential references to a medical problem, the Board stated that the employer was not excused from complying with the request to the extent that it included information to which an adequate defense had not been raised. Accordingly, the Board found that the employer was obligated to furnish the requested disciplinary records to the extent that they did not include individual medical information.

5. Duty to Furnish Information

Section 8(d) defines the obligation to "bargain collectively" imposed by the Act as requiring that bargaining be carried on in "good faith." The statutory duty of an employer to bargain in good faith has been interpreted to include the duty to supply to the bargaining representative information which is "relevant and necessary" to the intelligent performance of its collective-bargaining duty in contract administration functions.[59] The scope of this obligation was considered by the Board this past year in a number of cases.

In *Roadway Express*,[60] a Board panel considered whether the employer violated the Act by refusing to provide to the union a photocopy of a document relevant to a grievance.

Contrary to the judge, the panel majority found that the employer's offers to permit inspection of the document in lieu of the photocopy were sufficient and that the employer did not impede the grievance process. The employer discharged an employee based on complaints against him in a customer's letter. The employee filed a grievance protesting the discharge.

While discussing the grievance with the union business agent, the employer's terminal manager confirmed the existence of the customer's letter but denied the agent's request for a photocopy of the letter. At the second-step grievance hearing, the business agent renewed his request for the photocopy. The employer's representative said the business agent could examine the employee's file, which contained the letter, but could not make photocopies.

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[59] See *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), enfd. 347 F.2d. 61 (3d Cir. 1965).

[60] 275 NLRB 1107 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

The panel majority observed that an employer is not required to furnish relevant information in the exact form requested by the union. "It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining."[61] In this case, the information requested consisted of a single-page letter which could be read and understood in a matter of minutes. Although the employer's offer to allow inspection of the letter was made at the grievance hearing, the union did not avail itself of the offer or even ask to see the letter. Instead, the union continued to demand a photocopy. Under these circumstances, the panel majority concluded that the employer demonstrated its willingness to provide the information in a reasonable manner and that its offer to make the letter available for inspection satisfied the employer's bargaining obligation.[62]

Member Dennis, dissenting, would have found the violation. She disagreed with the majority's decision reversing the judge on two grounds. First, she argued that the reason the union requested the information was to prepare for the grievance hearing and the employer's offer was simply too late to save it from a charge of impeding the grievance procedure. Second, the union was entitled to photocopy the letter and not just examine it. As the Board said in *American Telephone*, except in exceptional cases "sound policy dictates that required documentary information should be generally furnished by photocopy."[63] Member Dennis found nothing exceptional about this case and would adopt the judge's decision.

The majority stated there was no evidence to indicate that the union was denied access to the requested information and, therefore, the union cannot complain that it was denied the opportunity to investigate the merits of the grievance. The majority further stated that the factors relied on by the Board in *American Telephone*—the volume and notice of the information sought and the union's need for accurate and complete information—are not applicable in this case in which the information consisted of a one-page letter. It said Member Dennis' position would create a per se rule, expressly disavowed by the majority in *American Telephone*, requiring an employer to provide the union photocopies of requested information without any consideration of the circumstances. Agreeing with the dissent that this case was not "exceptional," the majority reiterated its belief that on these facts

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[61] *Cincinnati Steel Casting Co.*, 86 NLRB 592, 594 (1949).

[62] In this respect, the majority distinguished this case from *American Telephone & Telegraph*, 250 NLRB 47 (1980), relied on by the judge. In *American Telephone*, the Board found the employer violated Sec. 8(a)(5) by refusing to provide photocopies of voluminous and complex records. The instant case is more comparable to *Abercrombie & Fitch*, 206 NLRB 464 (1973), in which the Board found the employer's failure to provide photocopies of 3-1/2 pages of uncomplicated records did not violate the Act. As in this case, the employer permitted on-premise inspection and note-taking.

[63] 250 NLRB 47 (1980).

the employer was not required to provide a photocopy of the letter.

6. Successor Employer

In *Harley-Davidson Co.*,[64] the Board reaffirmed the rule in *Barrington Plaza & Tragniew*[65] that when a successor employer recognizes an incumbent union that has been certified for a year or more, the union enjoys a rebuttable presumption of majority status only. A successor may lawfully withdraw from negotiations, the Board stated, at any time following recognition if it can show that the union had in fact lost its majority status at the time of the refusal to bargain or that the refusal to bargain was grounded on a good-faith doubt based on objective factors that the union continued to command majority support.

The Board overruled *Landmark International Trucks*,[66] *Holiday Inn of Niles Michigan*,[67] and similar cases holding that once a successor has recognized its predecessor's union, the union enjoys an irrebuttable presumption of majority status for a reasonable time. The Board cited the Sixth Circuit's reasons for denying enforcement in *Landmark*[68] to support the Board's view that a union recognized by a successor does not enjoy the same presumption of majority status as a union voluntarily recognized by an employer not subject to the obligations arising from successorship.

The Sixth Circuit pointed out, as quoted by the Board, that there is no reason to treat a change of ownership as equivalent to voluntary recognition after an organizing drive because in the former situation employees must be given the initial opportunity to gauge the effectiveness of the union's representation free of any attempts to change or end the relationship, whereas in the latter situation employees need no such opportunity because their relationship with the union is longstanding.

7. Other Issues

In *United Artists Communications*,[69] the Board, overruling *Peoria Painting Contractors*[70] and *Hooker Chemicals Corp.*,[71] found that the burden of notifying Federal and state mediation services of a dispute under Section 8(d)(3) and (4) of the Act rests exclusively with the party initiating the proposed termination or modification of a collective-bargaining agreement. Reversing the administrative law judge, the Board found that the employer, as the noninitiating party, did not violate Section

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[64] 273 NLRB 1531 (Chairman Dotson and Members Hunter and Dennis).
[65] 185 NLRB 962, 963 (1970).
[66] 257 NLRB 1375 fn. 4 (1981).
[67] 241 NLRB 555, 559 (1979).
[68] *Landmark International Trucks v. NLRB*, 699 F.2d 815, 818 (6th Cir. 1983).
[69] 274 NLRB 75 (Chairman Dotson and Members Hunter and Dennis).
[70] 204 NLRB 345 (1973), enf. denied 500 F.2d 54 (7th Cir. 1974).
[71] 224 NLRB 1535 (1976), enf. denied 573 F.2d 965 (7th Cir. 1978).

8(a)(5) and (1) when it implemented new conditions of employment without first resorting to a 30-day mediation period.

The employer and the union were parties to a collective-bargaining agreement. Prior to the expiration of the agreement the union advised the employer of its desire to meet for the purpose of negotiating a new agreement. Negotiations ensued but no agreement was reached. Thereafter, the employer implemented its final proposal. Neither party formally notified Federal or state mediation services of the existence of a dispute before the employer implemented new terms and conditions of employment.

Although emphasizing that participation of the mediation services is an important and principal policy interest embodied in Section 8(d), the Board found that the wording of Section 8(d) and its legislative history indicate that the method Congress chose to serve the purpose of facilitating the involvement of the mediation services was to assign to one party—the party initiating the proposed termination or modification of the agreement—a fixed and definite responsibility for notifying the mediation services.

Noting that *Peoria Painting* and *Hooker Chemicals* effectively placed the burden of notification on the noninitiating party, the Board found that the rule set forth in those cases was at odds with the language of the statute as written by Congress. The Board concluded that the failure of the union, as the initiating party in this case, to file notices to the mediation services did not serve to preclude the employer, as the noninitiating party, from undertaking otherwise lawful economic action.

In *North Shore Hospital*,[72] the Board, on remand from the U.S. Court of Appeals for the Second Circuit,[73] revoked the certification of the association as the bargaining representative of the employer's nurses and vacated its earlier decision and order[74] finding that the employer violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the association. In its earlier decision, the Board, although acknowledging that statutory supervisors participated at all levels of the association, found that the employer had not met its burden under *Sierra Vista Hospital*[75] of demonstrating that supervisory participation within the association gave rise to a "clear and present danger" of a conflict of interest interfering with the collective-bargaining process.

The court, although agreeing that *Sierra Vista* set forth the correct test, disagreed with the Board's application of that test to the facts of the instant case insofar as the Board limited the inquiry to proof of explicit supervisory interference in the particular bargaining unit. Applying a broader analysis and analyzing the evidence in light of the general structure and practice of the

[72] 274 NLRB 1289 (Chairman Dotson and Members Hunter and Dennis).
[73] 724 F.2d 269 (1983).
[74] 259 NLRB 852 (1981).
[75] 241 NLRB 631 (1979).

association, the court found that the supervisory influence here was "ubiquitous" and, if the association were an industrial union, it would not be permitted to represent rank-and-file employees. While noting that the Board had not distinguished between the conflict-of-interest rules applicable to professional associations and those applicable to industrial unions, the court held out the possibility that some distinctions would emerge on remand.

The Board, accepting the court's opinion as the law of the case, stated that it was compelled to disqualify the association as the exclusive representative of the nonsupervisory nurses "unless under the broadened analysis directed by the court we may establish legal rules applicable to professional associations different from those which govern industrial unions concerning conflicts of interest occasioned by supervisory participation." Noting that in *Sierra Vista* itself the Board stated that it would treat conflict-of-interest claims against nurses' associations in the same manner as such claims against other labor organizations, and that no party was urging the Board to establish different rules, the Board decided that it would treat the association "no differently than we would another labor organization alleged to suffer from a disqualifying conflict of interest."

Accordingly, and for the reasons stated in the court's opinion, the Board concluded that the "active participation of supervisory personnel in the association, the lack of insulation of the collective-bargaining process from governance of the organization, and the lack of a mechanism to assist the respondent and other employers from violating Section 8(a)(2) of the Act through supervisory employees' participation in the association's affairs, combine to present a clear and present danger of a conflict of interest."

In *KCRA-TV*,[76] the Board addressed the question of whether an employer and an incumbent union may, by mutual agreement, defer the effective date of a newly negotiated bargaining agreement until a pending decertification is resolved.

During bargaining for a new agreement, the employer and the union discussed the effective date of any agreement reached. At the time of these discussions the parties were aware that a petition to decertify the union was pending before the Board. Credited testimony established that the employer and the union had agreed that any bargaining agreement reached by the parties would become effective after the decertification petition was resolved. Before the petition was resolved, however, the union demanded that the employer execute the agreement. The employer refused.

Reversing an administrative law judge, the Board found that the mutual agreement of the parties to defer the agreement's effective date should be given effect. The Board found, therefore,

[76] 273 NLRB 1632 (Chairman Dotson and Members Hunter and Dennis).

that the employer did not violate Section 8(a)(5) and (1) when it refused to execute the agreement until the petition was resolved.

Finding no reason in law or policy why the agreement should not be given effect, the Board noted that the parties simply had designated an effective date in futuro for their respective contractual obligations, conditioned on resolution of the pending decertification petition in a manner favorable to the union. Because of the parties' mutual agreement on the contract's effective date, the Board found that the general rule set forth in *Dresser Industries,*[77] that the mere filing of a decertification petition does not require or permit an employer to withdraw from bargaining or executing a contract with an incumbent union, did not govern this case.

In *BASF Wyandotte Corp.,*[78] the Board held that an employer violated Section 8(a)(5) of the Act by unilaterally terminating certain privileges that it had previously granted to the union that represented its employees.

Among the discontinued privileges were the practices of allowing the union to use a furnished office on the company's premises, paying union committeemen for worktime spent discussing grievances with employees, and allowing the union chairman to spend 4 hours of paid time each workday conducting union business. The Board rejected the employer's contention that its termination of these privileges was permissible because the privileges violated Section 302 of the Labor Management Relations Act (LMRA) and were therefore illegal subjects of bargaining. In so doing, the Board, overruling its prior precedent in *Sheet Metal Workers (Florida Sheet Metal),*[79] held that it had authority to address the merits of the employer's contention concerning Section 302, which generally makes it illegal for an employer to pay money or other things of value to a union or union officer, except in limited circumstances.

The Board noted that the Federal courts were empowered to enforce this section. However, the Board observed that although it was not charged with enforcement of Section 302, neither was it barred from considering arguments concerning this section to the extent that they supported, or raised a possible defense to, unfair labor practice allegations.

The Board reasoned that if it refused to consider a contention that a contract provision violated Section 302, it risked requiring a party to adhere to the contract provision and violate Section 302 or unilaterally to cease observing the provision and thereby violate Section 8(a)(5) or Section 8(b)(3). The Board further reasoned that Section 8 and Section 302 should not be interpreted in isolation from each other, as both are encompassed with the LMRA.

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[77] 264 NLRB 1088 (1982).
[78] 274 NLRB 978 (Chairman Dotson and Members Hunter and Dennis).
[79] 234 NLRB 1238 (1978).

On examination of the merits of the employer's Section 302 argument, the Board found that the practices that the employer had unilaterally terminated did not violate Section 302.

E. Union Interference With Employee Rights

Even as Section 8(a) of the Act imposes certain restrictions on employers, Section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is generally analogous to Section 8(a)(1), makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights, which generally guarantee them freedom of choice with respect to collective activities. However, an important proviso to Section 8(b)(1)(A) recognizes the basic right of a labor organization to prescribe its own rules for acquisition and retention of membership.

1. Enforcement of Internal Union Rules

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule which "invades or frustrates an overriding policy of the labor laws."[80]

During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union actions and the types of those actions protected by the proviso to that section.

In *Virginia Cleaners*,[81] the union filed a state court suit against employees to collect fines for crossing the union's picket line during a strike. Although the administrative law judge found the fines unlawful, he rejected the General Counsel's argument that the union's suit also violated Section 8(b)(1)(A) of the Act. The judge relied on *Bill Johnson's Restaurants v. NLRB*,[82] in which the Supreme Court held, inter alia, that, although it is an unfair labor practice to pursue a baseless state court suit for the purpose of retaliation against the exercise of Section 7 rights, the Board may not enjoin a plaintiff's lawsuit unless it lacks a reasonable basis in fact or law. The judge concluded that the union's state court action, although contrary to Board law, was not baseless because the issue had not been ultimately decided by the Supreme Court.

The Board reversed, noting that the Supreme Court observed that its holding in *Bill Johnson's* did not encompass suits having

[80] *Scofield v. NLRB*, 394 U.S. 423, 429 (1969); *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).

[81] *Laundry Workers Local 3 (Virginia Cleaners)*, 275 NLRB 697 (Chairman Dotson and Members Hunter and Dennis).

[82] 461 U.S. 731 (1983).

an illegal objective under Federal law, such as prosecutions to enforce fines prohibited by the Act. The Board concluded that *Bill Johnson's* specifically permitted a finding that the union's suit was unlawful because the fines, levied after membership resignations, were unlawful under *Machinists Local 1414 (Neufeld Porsche-Audi)*,[83] and *Machinists Local 1769 (Dorsey Trailers)*.[84] Consequently, the Board found that the union violated Section 8(b)(1)(A) by pursuing a state court suit to collect unlawfully imposed fines.

2. Union Initiation Fees

In *General Dynamics*,[85] a Board panel reversed the administrative law judge's decision and found that the union violated Section 8(b)(1)(A) of the Act by imposing additional initiation fees on two employees who had resigned from the union and worked during a strike. The union commenced an economic strike upon the expiration of the collective-bargaining agreement. Approximately 1 month later, two employees, the charging parties, resigned from the union. The union accepted the resignations as valid and the charging parties returned to work. Thereafter, a new collective-bargaining contract with a union-security clause became effective and the strike ended. The charging parties then informed the union that they would support it with monthly dues, but that they would not become members; they also authorized the company to deduct dues from their paychecks. About 1 month later, the union's president informed thecharging parties that they were required to pay another initiation fee. The charging parties paid the fees under protest.

The panel found that the initiation fees acted as a penalty for the exercise of the Section 7 right to resign from full membership. The panel noted that the charging parties, like the employees who did not resign and were not assessed additional initiation fees, had paid initiation fees when they were hired, paid periodic dues, maintained their status as employees of the company, and never left the unit. The only difference between the charging parties and other unit members, relied on by the union to justify the additional fees imposed on the charging parties, was their resignations. However, because the right to resign is protected by Section 7, the imposition of the additional fees constituted a violation of Section 8(b)(1)(A).

In *Gregg Industries*[86] the Board faced the question of whether a union's objectionable conduct of offering to waive or reduce

[83] 270 NLRB 1330 (1984).

[84] 271 NLRB 911 (1984).

[85] *Professional Engineers Local 151 (General Dynamics)*, 272 NLRB 1051 (Chairman Dotson and Members Zimmerman and Dennis).

[86] *Teamsters Local 420 (Gregg Industries)*, 274 NLRB 803 (Chairman Dotson and Members Hunter and Dennis).

initiation fees for those employees who join the union prior to the election violated Section 8(b)(1)(A). The parties stipulated that the union's business agent stated to a substantial number of employees that if they paid dues before the union was selected as their bargaining representative the normal initiation fee would be waived for them. The parties further stipulated that the business agent also promised employees a reduced initiation fee for a limited, 2-week period. The union later withdrew its representation petition with prejudice, but the employer filed charges, and a complaint issued, alleging that the union's promises violated Section 8(b)(1)(A).

The Board concluded that the union's promises did violate that section based on a reason it found was analogous to one the Supreme Court relied on in *NLRB v. Savair Mfg. Co.*[87] in finding that such promises are objectionable conduct. Thus, the Board reasoned that such promises have a coercive aspect because they imply that if the employees do not join the union before the election they may well face a "wrathful union regime" should the union win. Accordingly, the Board found that offers to waive or reduce initiation fees made in the course of an organizing campaign have a reasonable tendency to coerce employees in the exercise of their Section 7 right not to join the union.

The Board found support for this reading of Section 8(b)(1)(A) in its legislative history which suggests that Section 8(b)(1)(A) was intended to reach union organizing campaign activities, specifically union threats to employees unwilling to join that they will be charged higher initiation fees later when maintenance of membership may be a condition of employment.

Chairman Dotson would add a further rationale for finding an 8(b)(1)(A) violation—that Section 8(b)(1)(A) is the counterpart of Section 8(a)(1). Thus, Chairman Dotson finds that just as an employer violates Section 8(a)(1) by offering economic inducements to influence the employees' decision on union representation, a union violates Section 8(b)(1)(A) by doing likewise.

3. Superseniority to Union Officials

In *Gulton Electro Voice*,[88] the parties' collective-bargaining agreement contained a superseniority clause providing that, notwithstanding the seniority system, the last persons to be laid off or bumped from their jobs would be the elected union officers and stewards including, inter alia, the president, chief steward, vice president, recording secretary, and negotiating committee members. The judge relied on the standards set forth in *Gulton Electro Voice*[89] and found that the chief steward's grievance han-

[87] 414 U.S. 270 (1973).

[88] *Electrical Workers IUE Local 663 (Gulton Electro Voice)*, 276 NLRB 1043 (Chairman Dotson and Members Dennis and Johansen).

[89] 266 NLRB 406, 409 (1983), enfd. sub nom. *Electrical Workers IUE Local 900 v. NLRB*, 727 F.2d 1184 (D.C. Cir. 1984).

dling and contract administration duties entitled her to exercise the full grant of superseniority rights, including job-bumping protection. Applying the same standards, the judge found that none of the other union officers in question performed grievance handling or contract administration duties entitling the officer to any superseniority and, thus, by maintaining such a clause for their benefit, the union violated Section 8(b)(1)(A) of the Act.

The Board panel disagreed with the judge that the chief steward's job-bumping protection was defensive in nature and instead found that the chief steward did not need to be on any particular job in order to perform her plantwide grievance handling duties effectively. Consistent with *Gulton*, the panel rejected the validity of granting superseniority to reward or encourage service as a union official because, as "it nevertheless remains the union's task to build and maintain its own organization," the union could pay or provide union officials other nonjob benefits.[90]

Contrary to the judge, the panel found lawful the superseniority clause's granting layoff and recall preference to the union president. Her full-time presence on the job allows her to participate in grievance handling and contract administration in a variety of ways and at many levels. Without that presence, the employees would not receive the level of union representation to which they are entitled.

Like the chief steward, however, the president's duties are plantwide and she need not be on any particular job to execute them effectively. The panel agreed with the judge and found the union violated Section 8(b)(1)(A) by maintaining a superseniority clause in its collective-bargaining agreement according the union president protection from job bumping.

F. Union Bargaining Obligation

A labor organization, as exclusive bargaining representative of the employees in an appropriate unit, no less than an employer, has a duty imposed by the Act to bargain in good faith about wages, hours, and other terms and conditions of employment. A labor organization or an employer respectively violates Section 8(b)(3) or Section 8(a)(5) if it does not fulfill its bargaining obligation.

1. Union Bug

In *Kansas City Power*,[91] the panel majority overruled *Kansas City Power*[92] and, affirming the decision of the administrative law

[90] 266 NLRB at 409.

[91] *Electrical Workers IBEW Local 1464 (Kansas City Power)*, 275 NLRB 1505 (Chairman Dotson and Member Dennis; Member Hunter dissenting).

[92] *Electrical Workers IBEW Local 1464 (Kansas City Power)*, 275 NLRB 557 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

judge, found that the union did not violate Section 8(b)(3) by refusing to execute a collective-bargaining agreement which did not contain a "union bug" (i.e., a union label or trademark indicating that the material was produced by employees represented by that union). The parties had agreed on all terms of the contract, and had also agreed that the final printed copies of the contract would contain a union bug, showing that it was printed by employees of the employer who were represented by a sister local of the respondent union. However, the employer subsequently reneged on its agreement to include a union bug on the printed contract, and the union refused to execute the contract without the union bug.

In dismissing the complaint against the union, the administrative law judge, affirmed by the panel majority, found that the union acted lawfully in conditioning its execution of the collective-bargaining agreement on the inclusion of the union bug because even though inclusion of a union bug is not a mandatory subject of bargaining, about which the union could have lawfully bargained to impasse, the parties did agree to include the union bug in the contract, and "[T]he union should not be forced to forfeit what it secured during negotiations. Neither [party] should be permitted to rewrite the contract after agreement was reached."

Member Dennis concurred in the result on the grounds that a party is not free in negotiations to agree to nonmandatory subjects, to subsequently delete those agreed-upon nonmandatory subjects from the written agreement, and then to compel the other party to sign the inaccurate written agreement on pain of violating Section 8(a)(5) or Section 8(b)(3).

Member Hunter dissented, finding that the employer's refusal to include the union bug on the final printed contract did not justify the union's refusal to execute that agreement because the inclusion of the bug was not a material aspect of the collective-bargaining relationship and, therefore, not a substantive aspect of the contract but was rather, at most, a peripheral concern, something akin to a ministerial matter.

2. Failure to Provide Trust Fund Information

In *Johns Hopkins*[93], the Board found that the union violated Section 8(b)(3) of the Act by failing to provide certain information about an employee benefit trust fund and by striking over the employer's contribution to that fund. The decision by the administrative law judge was modified to the extent the judge had relied on *Sinai Hospital,*[94] which was overruled in relevant part by *Layman's Market.*[95]

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[93] *Hospital Employees District 1199E (Johns Hopkins)*, 273 NLRB 319 (Chairman Dotson and Members Zimmerman and Hunter).

[94] *Hospital Employees (Sinai Hospital)*, 248 NLRB 631 (1980).

[95] *Food & Commercial Workers Local 1439 (Layman's Market)*, 268 NLRB 780 (1984).

The union and the employer had been parties to a series of collective-bargaining agreements requiring the employer, among other things, to contribute to the National Benefit Fund for Hospital and Health Care Employees (the Fund), a trust subject to Section 302(c)(5) of the Act. The parties were going to negotiate a new agreement to succeed the one that was expiring that year. Anticipating those negotiations, the employer wrote the union requesting certain information about the Fund that the employer thought would allow it to determine whether its employees were enjoying benefits commensurate with the contributions the employer had made.

The union fowarded the request to the Fund. Contract negotiations began before the information was provided to the employer.

The Fund eventually provided the employer with certain requested information, but some of the information was omitted. The Fund expressly declined to correlate the information with names and addresses of the individual employer-contributors to the Fund, as the employer had requested, the Fund trustees having voted to make that information confidential. The employer informed the union that the information provided by the Fund was inadequate and specified the additional information it was still requesting. On the day the contract expired, the parties reached impasse and the union began a strike which lasted until a contract was signed 15 days later. A principal issue causing the impasse and strike was the parties' disagreement over whether the employer would continue contributing to the Fund and, if so, on what terms.

The Board panel declined to find, as the judge had, that the union violated Section 8(b)(3) by virtue of any action or inaction by the Fund. The panel did determine that the union violated the Act by failing to explore alternative means of providing the requested information and by striking while refusing to provide information relevant to the outstanding issues in contract negotiations.

The judge had found that the union was required, under Section 8(b)(3), to direct its representatives among the Fund trustees to provide the information the employer requested, relying on *Sinai Hospital*. In its then-recent decision (*Layman's Market*), the Board overruled that aspect of *Sinai Hospital*. Holding that trustees of Section 302(c)(5) trusts were not agents of the parties who appoint them, for purposes of collective bargaining, the Board decided that the actions of trustees could not be the basis for bad-faith bargaining under the Act unless "a collective-bargaining representative demonstrates that it is in de facto control of a nominally independent trust fund."

In this case, the Board found that the union was not in control of the Fund at any time relevant. The Board noted that control of the Fund by this union was demonstrated in *Sinai Hospital*, as

was reiterated in *Layman's Market*. Since *Sinai* was decided, however, the relationship between the union and the Fund had changed. At that time the Fund's director was a union officer, and it was, in effect, the director's decision at issue in that case because the Fund trustees were deadlocked. In this case, the Fund director was not and never had been associated with the union. Furthermore, the decision to make the disputed information "confidential" was at the initiative of the employer trustees of the Fund. In these circumstances, the Board could not find that the union-appointed trustees had any duty, under Section 8(b)(3), to oppose the decision as Fund trustees.

The Board agreed with the judge that the union was obliged to investigate alternative sources of the requested information, or to explain its unavailability, and it failed to do either. The Board had stated in *Layman's* that the requested information was equally available to both bargaining parties, but they were addressing only the question of the union's obligation to obtain information from the Fund. In that case, the fund eventually provided or offered to provide all the requested information. Here, the employer informed the union ahead of negotiating time that it needed information the Fund had failed to provide. The Board did not determine whether the union had access to that information through other means because the union did not offer to investigate other means, nor to show the employer that there were no other means. The Board reiterated what it stated years ago, "minimum standards of good faith required" that the union do at least that much.[96]

G. Illegal Secondary Conduct

The statutory prohibitions against certain types of strikes and boycotts are contained in Section 8(b)(4). Clause (i) of that section forbids unions to strike, or to induce or encourage strikes or work stoppages by any individual employed by any person engaged in commerce, or in any industry affecting commerce, and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, when the actions in clause (i) or (ii) are for any of the objects proscribed by subparagraphs (A), (B), (C), or (D). Provisos to the section exempt from its prohibitions "publicity, other than picketing," and "any primary strike or primary picketing."

In *Checker Taxi*,[97] the Board found that labor organizations violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing the cab companies on behalf of independent contractor drivers, with an object of interrupting the leases between the companies and

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[96] *General Electric Co.*, 150 NLRB 192, 261 (1964).

[97] *Production Workers Local 707 (Checker Taxi)*, 273 NLRB 1178 (Chairman Dotson and Members Zimmerman and Hunter).

the independent leased cab drivers and inducing the employee-commissioned drivers to cease work.

The leased cab drivers (LCDs), who were admitted to be independent contractors, banded together to bargain collectively with the cab companies. By letter the respondent unions requested, on behalf of the LCDs, that the cab companies meet with the unions "for the purpose of reaching an agreement setting forth uniform conditions regarding the leasing of the cabs." When the cab companies refused to meet with the unions, the unions and the LCDs began picketing and handbilling cab company garages.

Relying, inter alia, on *Longshoremen ILA v. Allied International*,[98] the Board found, contrary to the administrative law judge, that it did have subject matter jurisdiction despite the absence of a conventional labor dispute. The Board further concluded that although the term "secondary boycott" is generally used as a "short-hand reference to the conduct forbidden by section 8(b)(4)," the actual language of that section is intentionally broad and its application of that section need not be limited by that term when a union's conduct fits with the actual language of the statute. In determining that Section 8(b)(4) applied to the unions' conduct, the Board looked to the problem to which the legislation was addressed and the intent behind the 1959 amendments and concluded that Congress was concerned, in part, with instances during which unions had used coercive tactics when their objectives were unrelated to representing employees.

The Board also noted that courts have found that Section 8(b)(4) encompasses conduct on behalf of individuals found not to be statutory employees. Finally, the Board held that there is no implication in either the legislative history or case precedent that Congress intended the "primary" proviso of Section 8(b)(4) to protect picketing on behalf of independent contractors. Accordingly, the Board found that it is not necessary to find unlawful "secondary" activity, to find that a "primary" dispute exists at all, as long as it is clear that the charged union is not itself engaged in a primary labor dispute with the picketed employers.

H. Recognitional Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization which is not the certified employee representative to picket or threaten to picket for an object of recognition or organization in the situations delineated in subparagraphs (A), (B), and (C). Such picketing is prohibited: (A) when another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under Section 9(c); (B) when a valid election has been held within the preceding 12 months; or (C) when no petition for a Board elec-

[98] 456 U.S. 212 (1982)

tion has been filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing."

A significant case decided by the Board during this past fiscal year raised the question of whether under the particular circumstances a picketing union violated Section 8(b)(7)(C).

In *Albatross Productions*,[99] the panel majority reversed the administrative law judge and found that the respondent union violated Section 8(b)(7)(C) by its periodic picketing of the employer on several separate occasions from 31 December 1982 through 13 October 1983.

The employer was a producer of musical concerts (approximately 10 per month) by various artists, conducted at several locations. The employer employed stagehands on a concert-by-concert basis. For several years prior to December 1982, the employer had used the respondent's hiring hall as one source of stagehands for concerts held in halls or stadiums. Prior to December 1982, the respondent had periodically requested the employer to enter into a collective-bargaining agreement; the employer had consistently refused to do so.

In December 1982, the respondent's president implied to the employer's production manager that because the employer did not have a collective-bargaining agreement, stagehands from the respondent's hiring hall might not report for work at the employer's upcoming New Year's Eve concert.

The employer then decided to obtain stagehands for its New Year's Eve concert from a source other than the respondent's hiring hall. When the respondent found out about the employer's plans on 30 December, it expressed its displeasure to the employer; advised the president of a stage rigging company that was working on the employer's New Year's Eve concert that a "job action" had been invoked because the employer was not going to obtain stagehands from the respondent's hiring hall and the respondent and the employer did not have a collective-bargaining agreement and the employer did not want to enter into one; and advised the employer that the respondent would promise in writing not to take any job action if the employer would use stagehands dispatched from the respondent's hiring hall. The employer agreed to hire some of the stagehand crew through the hiring hall, but the respondent insisted that the employer hire a crew dispatched entirely through the respondent's hiring hall. The employer did not agree to this.

The next day, 31 December, the respondent picketed at the employer's concert with signs stating either "Albatross [the employer] is unfair to Local 15 [the respondent union]" or "Albatross is unfair to Local I.A.T.S.E. 15." The employer informed the respondent that the employer decided not to use the respond-

[99] *Stage Employees IATSE Local 15 (Albatross Productions)*, 275 NLRB 744 (Chairman Dotson and Member Hunter, Member Dennis dissenting).

ent's stagehands at the New Year's Eve concert because the employer believed that the respondent either might not provide the necessary stagehands for the New Year's Eve concert or that the stagehands provided by the respondent might refuse to work unless the employer entered into a collective-bargaining agreement with the respondent. From then on, the employer did not use the respondent's hiring hall as a source of stagehands. Between April and October 1983, the respondent picketed at six concerts produced by the employer.

In concluding that the respondent violated Section 8(b)(7)(C), the Board majority thoroughly analyzed the past nonexclusive hiring hall relationship between the respondent and the employer and found that the employer had never recognized the respondent as the collective-bargaining representative of the employer's stagehands. The Board majority further found that an object of the respondent's picketing was to obtain such recognition from the employer.

Member Dennis, dissenting, found that the respondent's picketing did not violate Section 8(b)(7)(C) because its purpose was only to restore the relationship it previously had with the employer. Thus, in Member Dennis' view, adopting the administrative law judge's analysis, if the respondent previously had a recognitional relationship with the employer, then the respondent's picketing was only to restore that recognitional relationship—an object not prohibited by Section 8(b)(7)(C). If, on the other hand, in Member Dennis' view, the respondent previously had only a nonrecognitional relationship with the employer, then the respondent's picketing was only to restore that nonrecognitional relationship—again, an object not prohibited by Section 8(b)(7)(C).

I. Remedial Order Provisions

1. Remedy Against Employer

a. Bargaining Order Criteria

In *Sangamo Weston, Inc.*,[100] on reconsideration of its original decision,[101] the Board concluded that the General Counsel failed to establish either that the employer unlawfully refused to bargain or "that the Board's traditional remedies are inadequate to erase the effects of the [employer's] few unfair labor practices and ensure a fair election." The unfair labor practices involved were an implied threat of plant relocation, the solicitation of grievances, a promise of benefits, and coercive interrogations.[102]

The preelection campaign, however, was characterized not only by this unlawful conduct by the employer but also by an

[100] 273 NLRB 256 (Chairman Dotson and Members Hunter and Dennis).
[101] 251 NLRB 1597 (1980).
[102] Chairman Dotson would not have found a threat of plant relocation.

extensive lawful campaign by the employer and by a countervailing campaign by the union that included both permissible tactics and impermissible threats of retaliation for opposing the union. In these circumstances, the panel majority reasoned in part, "it would be little more than speculation to conclude that the Respondent's unfair labor practices were the factor that decisively tipped the scales" to cause the union's election loss.[103]

b. Remedy for *Weingarten* Violation

In *Taracorp Inc.*,[104] the Board overruled earlier decisions in *Kraft Foods*,[105] and other cases, and decided that it would no longer order a make-whole remedy where the employer's sole violation was a *Weingarten*[106] violation denying an employee's request for union representation at an investigatory interview and the employee has been discharged for cause.

The Board majority noted that in *Weingarten* cases, the reason for the employee's discharge is not an unfair labor practice but rather some sort of employee misconduct and, thus, there is an insufficient nexus between the violation committed and the reason for the discharge. The majority noted that Section 10(c) bars the Board from ordering reinstatement or backpay for those suspended or discharged for cause and concluded that Section 10(c) precludes a make-whole remedy in the context of a *Weingarten* violation.

The Board majority found that past cases exceeded the scope of the Supreme Court's *Weingarten* decision insofar as they ordered make-whole relief when the employer had discharged employees for reasons wholly independent of any unfair labor practice. Noting that the Board is also precluded from ordering punitive remedies or remedies which are a windfall to employees or employers, the majority found that these were precisely the results caused by the imposition of make-whole remedies for *Weingarten* violations. However, in cases where an employee is discharged or disciplined because he exercised his protected right to union representation, the majority indicated its intent to apply the make-whole remedy because in such circumstances the employee's employment status has been adversely affected because of the employees' protected concerted activity.

Applying these principles to the facts of the case, the majority concluded that the employer violated Section 8(a)(1) by depriving employee Elmore of his right to a union representative at an investigatory interview which he reasonably believed might

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[103] Chairman Dotson would have found that "the Union's outrageous conduct was far more serious than that allegedly engaged in by the Respondent and in and of itself precludes granting of a bargaining order." Member Dennis concurred in the denial of a bargaining order solely on the basis that the number and the nature of the unfair labor practices were insufficient to warrant that remedy.

[104] 273 NLRB 221 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman concurring).

[105] 251 NLRB 598 (1980).

[106] *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

result in disciplinary action. However, the majority found that Elmore was discharged not because he had asserted his *Weingarten* rights but because the respondent had determined that Elmore had refused to perform his assigned work. Accordingly, the Board ordered the respondent to cease and desist from its unlawful conduct but did not order reinstatement or backpay.

In a separate concurring opinion, Member Zimmerman joined his colleagues in overruling *Kraft Foods* and in concluding that make-whole relief in the context of a *Weingarten* violation is contrary to the remedial restrictions of Section 10(c). However, unlike the majority, Member Zimmerman did not believe that past Board decisions such as *Materials Research Corp.*[107] exceeded the intended scope of the Supreme Court's *Weingarten* decision. Accordingly, Member Zimmerman disagreed with the majority's holding that make-whole relief for *Weingarten* violations was "bad policy" independent of the restrictions of Section 10(c).

The Board considered a similar issue in another case remanded by the U.S. Court of Appeals for the Seventh Circuit. A panel majority in *Illinois Bell Telephone Co.*[108] concluded that its original order was inappropriate insofar as it had provided a make-whole remedy for an employee who had been discharged for cause in the context of a *Weingarten* violation. Thereafter, the court refused to enforce those portions of the Board's order which provided for reinstatement, backpay, and removal of references to the discharge from the employee's personnel record. The court noted that the employee had been discharged for cause and concluded that the employer was entitled to show whether it had evidence of the employee's misconduct independent of that obtained during the illegal interview sufficient to support its discharge of the employee for cause. The court remanded the case to the Board for further proceedings necessary to ascertain the appropriateness of the remedy given.

The panel majority, applying the rationale of *Taracorp Inc.*, concluded that the appropriate remedy for the *Weingarten* violation consisted of an order requiring the employer to cease and desist from such conduct and to post an appropriate notice. Noting that the discharge resulted from the employee's alleged misconduct which the employee confessed during the interview and not from the employer's denial of her request for a representative, the majority found an insufficient nexus between the violation committed and the reason for the discharge to warrant a make-whole remedy. Noting that the employer did not produce credible independent evidence of the employee's misconduct and that the court implicitly stated that it would enforce the original make-whole remedy in this eventuality, the majority nevertheless concluded that this does not require the Board to adhere to its

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[107] 262 NLRB 1010 (1982).

[108] 275 NLRB 148 (Chairman Dotson and Member Hunter, Member Dennis dissenting).

original remedy when it was determined that that remedy is inappropriate.

Member Dennis, dissenting, would have reaffirmed the Board's original order even though it is inconsistent with *Taracorp.* Noting the terms of the court's remand, she concluded that the Board is required to provide a make-whole remedy because independent evidence did not sufficiently support the employer's discharge of the employee for cause.

c. Remedy in Bankruptcy Context

In *BDJ Contracting Co.*,[109] the Board considered whether a remedy for violations of Section 8(a)(5) and (1) should be terminated as of the date the respondent filed a Chapter 11 bankruptcy petition. The Board granted the General Counsel's Motion for Summary Judgment because of the respondent's failure to file a timely answer to the complaint or amended complaint.

The majority, consistent with *NLRB v. Bildisco & Bildisco*,[110] extended the remedy only to the date the respondent filed its Chapter 11 bankruptcy petition. *Bildisco* held that an employer does not violate Section 8(a)(5) and (1) by changing the terms and conditions of a collective-bargaining agreement during the period between the filing of a bankruptcy petition and the bankruptcy court's determination whether the collective-bargaining agreement may be rejected.

Member Hunter, for the reasons set forth in *Edward Cooper Painting*,[111] disagreed with terminating the remedy as of the date the respondent filed its bankruptcy petition because all the violations found preceded the filing of the petition.

In *Edward Cooper Painting*, an employer corporation petitioned for relief as a voluntary debtor in bankruptcy and requested permission under the bankruptcy laws to reject an existing collective-bargaining agreement covering its employees. Several months prior to the filing for such relief, the employer unlawfully abrogated the terms of the collective-bargaining agreement. The administrative law judge's recommended order required that the employer abide by the terms of the contract until such time as the agreement expired by its own terms on a date several months after the filing of the bankruptcy petition.

The Board modified this aspect of the judge's order. In doing so, the Board relied on the Supreme Court's holdings in *Bildisco* that from the filing of a petition in bankruptcy until formal acceptance, a collective-bargaining agreement is not an enforceable contract within the meaning of Section 8(d) and that a debtor-in-possession does not commit an unfair labor practice when it unilaterally rejects or modifies a collective-bargaining agreement before formal rejection is approved by a bankruptcy court. The

[109] 273 NLRB 1858 (Chairman Dotson and Members Hunter and Dennis).

[110] 465 U.S. 513 (1984).

[111] 273 NLRB 1870 (Chairman Dotson and Member Dennis; Member Hunter dissenting in part).

Board's order required that the employer enforce the terms and conditions of the contract from the date of its unlawful abrogation until the date on which the corporation filed its petition for bankruptcy.

Member Hunter dissented. He found that because the adjudicated violations occurred prior to the filing of the bankruptcy petition, there was no basis in the Supreme Court's opinion in *Bildisco* for terminating the Board's remedies as of the date the petition was filed. Although Member Hunter agreed with Chairman Dotson and Member Dennis that under *Bildisco* the critical date for determining whether a violation of the Act occurred is the date a bankruptcy petition is filed, he noted that the Court in *Bildisco* stated nothing which questioned the Board's authority to adjudicate and/or remedy prepetition unfair labor practices. He concluded that because the Board adjudicated the prepetition violations in this case, it should also be able to remedy them, such remedy being subject to review by the bankruptcy court as a creditor's claim. The Board majority disagreed with Member Hunter that by cutting off the Board's remedy as of the date of the bankruptcy petition, the Board foreclosed consideration by that forum of issues relating to the appropriateness of rejection of the collective-bargaining agreement or the determination of sums owed under a rejected contract.

In another decision during the report year, *Leland Detroit Mfg. Co.*,[112] the Board considered whether, under *NLRB v. Bildisco & Bildisco*, supra, an unlawfully discharged employee is entitled to backpay and benefit payments for the period following the employer's petition in bankruptcy, when the employer failed to file an answer to the Board's backpay specification.

The facts revealed that the most recent collective-bargaining agreement expired on 1 November 1980. The employee was unlawfully discharged on 26 November 1980. The employer filed a Chapter 11 petition in bankruptcy on 26 October 1981. The plant closed on 25 May 1982. A backpay specification issued. The employer did not file an answer. The General Counsel filed a Motion for Default Judgment.

The panel majority granted the General Counsel's Motion for Default Judgment and awarded the full amount of backpay and benefit payments as set forth in the backpay specification.

Member Dennis noted that the underlying violation occurred before the filing of the bankruptcy petition. Under *Bildisco*, the employer could have lawfully reduced existing wages and benefits after the bankruptcy petition was filed. The employer did not raise this defense to part of its liability, however, nor did the evidence indicate that the employer actually reduced wages and benefits after the filing of the petition.

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[112] 275 NLRB 596 (Members Hunter and Dennis, Chairman Dotson dissenting).

Member Hunter granted the motion based on his dissent in *Edward Cooper Painting*, supra. Member Hunter would not cut off the Board's traditional remedies as of the date of the filing of the bankruptcy petition when the unfair labor practices preceded the filing of the petition.

Chairman Dotson dissented and would have remanded the case for further investigation into the circumstances surrounding the filing of the bankruptcy petition. Relying on the Supreme Court's statement in *Bildisco* that a collective-bargaining agreement is not an enforceable contract from the filing of a bankruptcy petition until formal acceptance, Chairman Dotson found that the burden was on the General Counsel to establish the continued effectiveness of the bargaining agreement on which the requested remedy was based. The record did not show nor did the General Counsel specifically allege that the terms and conditions of employment remained unchanged following the filing of the petition.

d. Personal Liability

In *Marsco, Inc.*,[113] the General Counsel filed with the Board a motion for determination of personal liability alleging that the employer's president wrongfully converted company assets to his personal use and intermingled his personal and corporate financial affairs with the intention of frustrating a backpay order issued by the Board in an earlier proceeding involving a number of discriminatees.

The General Counsel contended that by taking certain actions, the individual rendered the employer bankrupt and insolvent. In particular, the General Counsel submitted that the employer's president sought and was awarded judgment in a state court proceeding on a cognovit promissory note from the employer to the individual, repossessed all secured assets from the employer, filed a petition for voluntary bankruptcy, and thereafter sold all the recovered assets to a second corporation. The estate in the employer's bankruptcy proceeding was closed without distribution to any secured or unsecured creditors, including the Board.The General Counsel requested that the president be held personally liable under the Board's backpay order in the amount involved in the sale of the repossessed assets or, in the alternative, that a hearing be held to resolve the matter.

The Board majority found that the General Counsel failed to demonstrate that the president committed any act which would justify piercing the corporate veil to reach him as an individual. The Board majority noted the lack of information critical to granting the relief requested. For example, the Board majority mentioned the absence of information concerning such bankruptcy matters as the amount of a secured claim filed by the presi-

[113] 275 NLRB 633 (Chairman Dotson and Member Hunter; Member Dennis dissenting).

dent, the relative priorities of certain unsecured claims, the ultimate disposition of the employer's assets by the bankruptcy court, and whether the bankruptcy court considered the sale of the repossessed assets. The Board majority denied the General Counsel's motion, stating there was insufficient evidence that the Board or the discriminatees were in any way prejudiced by the president's actions or that the president caused the financial demise of the employer.

Member Dennis dissented. She found the missing information regarding the bankruptcy case irrelevant as a matter of law. Because neither the employer nor its president obtained a discharge of the backpay obligation from the bankruptcy court, she found no legal impediment to the Board's determining the president's personal liability on the General Counsel's uncontested allegations. She further found no reason for denying the General Counsel's alternative request for a hearing.

e. Order to Publish in Conflict with First Amendment

In *Herald News*,[114] when the employer, a daily newspaper, had violated Section 8(a)(3) and (1) by canceling the weekly column of one of its reporters, the Board on remand revised its remedial order to comport with the first amendment concerns expressed by the Circuit Court of Appeals for the District of Columbia. In its original decision,[115] the Board had ordered the employer to "restore" the reporter to his former position as a weekly columnist, and to "resume publication" of his weekly column, "subject to the same lawful standards and requirements" that it imposes or may impose on its other employees.

The District of Columbia Circuit concluded that the Board had violated the first amendment by ordering the employer to "resume publication" of the column "subject to the same lawful standards and requirements" imposed on other employees.[116] The court found that the Board's order would "compel" the employer "to publish what it prefers to withhold," and that it would inject the Board "into the editorial decision-making process on an ongoing basis."[117]

Quoting *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the court noted that "[t]he choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—*whether fair or unfair*—constitute the exercise of editorial control and judgment [emphasis in original]."[118] The court found that to enforce the Board's order would require for the first time a recognition that "government regulation of the

[114] 276 NLRB 605 (1985).
[115] 266 NLRB 898 (1983).
[116] *Passaic Daily News v. NLRB*, 736 F.2d 1543 (D.C. Cir. 1984).
[117] Id. at 1557.
[118] Id. at 1558, quoting 418 U.S. at 258.

material to go into a newspaper" can be exercised consistent with first amendment guarantees.[119]

The court concluded that it would have been "more sympathetic" to the argument that the Board's order "merely encompassed a nondiscrimination directive" if the publication order had been absent and if the Board had "narrowly crafted" the clause which stated, "subject to the same lawful standards and requirements that [the employer] imposes or may impose on its other employees."[120] The court concluded that the latter clause was "written so broadly that it invites the Board to review the Company's publication standards and to become directly involved with the Company's exercise of editorial control and judgment."[121]

On remand, the Board modified its order [276 at 608] to require the employer to "[r]estore" the employee to his column-writing duties, and to "decide whether to publish his submissions based upon any factors other than his union or protected activity." The Board also added a proviso stating that "nothing in this order shall be interpreted as a requirement that the [employer] publish any of the columns submitted by [the employee]." The Board stated that it had retained the requirement that the employer restore the employee to his column-writing duties because the court had not objected to that clause. The Board emphasized that this clause required only that the employer may then decide whether to publish them. The Board also emphasized that this clause would not compel the employer to publish what it prefers to withhold, and would not invite the Board to review the employer's publication standards or to become directly involved with the employer's exercise of editorial control and judgment.

In this connection, the Board noted that in *Associated Press v. NLRB*, 301 U.S. 103 (1937), the Supreme Court had approved the Board's reinstatement of a news editor who had been unlawfully discharged. In that case the Court stated that the "publisher of a newspaper has no special immunity from the application of general laws" and no special privilege to invade the rights and liberties of others.[122]

The Board then stated that it had omitted the publication order[123] and that it had "narrowly crafted" its order by requiring the employer to "decide whether to publish [the employee's] submissions based upon any factors other than his union or protected activity." The Board observed that this clause narrowed the order by omitting the requirement that the employer apply to the employee's columns the "same" standards and requirements

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[119] Id. at 1558.

[120] Id. at 1559.

[121] Id.

[122] 301 U.S. at 132-133.

[123] At a later point the Board noted that it had emphasized the absence of a publication order by including a proviso stating that "nothing in the order shall be interpreted" as a publication requirement.

imposed on other employees and by substituting a provision directing the employer to base its decisions on "any" factors other than the employee's union or protected activity. In conclusion, the Board observed that the clause requires only that union or protected activity be eliminated from the decision-making process, that the clause does not invite the Board to review publication standards or to become directly involved with editorial control and judgment, and that compliance with the order will merely involve an inquiry into the employer's motive, an inquiry which the court and the Supreme Court have already recognized as constitutionally permissible. In a footnote, the Board emphasized that the employer may reject any of the employee's individual columns, or may decide permanently to cancel his column, so long as its decision is not based on the employee's union or protected activity.

2. Remedy Against Union

a. Backpay Obligations

In *RPM Erectors*,[124] a Board panel considered whether an employee had incurred a willful loss of earnings and thus was not entitled to backpay.

The respondent refused to dispatch from its hiring hall employees who were not current in their supplemental dues payment required under a multiemployer agreement. An employee refused to pay dues, taking the position that employees should be dispatched first and then pay the dues. The employee brought a lawsuit challenging the dues' legality. Because the employee was in arrears in his supplemental dues payments, he was ineligible for dispatch to over 400 jobs.

The administrative law judge found that the employee's obligation to make reasonable efforts to find new employment did not require him to abandon his position regarding the legality of the requirement that the supplemental dues be paid before an employee could be dispatched to employment within the multiemployer bargaining unit. The judge observed that there was no evidence that the employee's position was unreasonable or taken in bad faith.

The judge found it significant that the respondent could have tolled its backpay liability at any point by abandoning its own legal position and that to require the employee to abandon his position when the respondent could have done the same would not advance the public interest. The wrongdoer bears the burden of any uncertainty resulting from its unlawful conduct. Accordingly, the judge found that the employee did not willfully incur any loss of earnings that would mitigate the respondent's damages and the employee was entitled to backpay.

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[124] *Iron Workers Local 433 (RPM Erectors)*, 275 NLRB 1539 (Chairman Dotson and Member Dennis; Member Hunter concurring).

The panel majority concluded that the employee was not entitled to backpay. The majority found that although no evidence suggested that the employee's legal position was not asserted in good faith, it was wrong because the employee was required to pay the dues before he could be dispatched to any job covered by the multiemployer agreement.

The majority found that the employee would not, as he believed, have been required to abandon his legal position by paying the supplemental dues. The majority suggested a number of possible ways the employee could have met the dues obligation while preserving his position. The majority disagreed with the judge that the respondent should have been required to compromise its own legal position and dispatch the employee without payment of supplemental dues, as it could not lawfully have done so unless it did the same for all other employees.

Under the circumstances, the majority did not believe the respondent was required to stop enforcing its lawful dues provision to mitigate its backpay liability to the employee. The employee essentially took himself out of the job market by refusing to pay the required dues. Because he could have paid the dues without compromising his good-faith, but incorrect, legal position, he incurred a willful loss of earnings.

Concurring, Member Hunter agreed that the employee was not entitled to backpay. He found that the judge erroneously placed on the respondent the burden of changing its legal position and consequently also placed on the respondent the burden to mitigate its backpay liability.

In *San Francisco Newspaper*,[125] a Board panel clarified the backpay obligations of a respondent union to two discharged grievants, when the union had breached its duty of fair representation in processing their grievances by failing to ascertain the grievants' versions of events that led to their discharge prior to acquiescing in the dismissal of their grievances. In a prior decision,[126] the same Board panel had ordered the union to request the employer to reinstate the two grievants to their former positions and, if the employer refused, to promptly pursue the remaining stages of the grievance procedure, including arbitration, in good faith with due diligence. The order also specified that the union was to make whole the two grievants for any loss of pay should the union be unable to pursue the remaining stages of the grievance procedure "due to considerations of timeliness."

In clarification of that order, the Board panel considered whether the union's inability to resolve these grievances on the merits due to some reasons other than timeliness would likewise leave the union liable for backpay to the grievants. On further consideration, the panel held that if for any procedural or sub-

[125] *Graphic Communications Local 4 (San Francisco Newspaper)*, 272 NLRB 899 (Chairman Dotson and Members Zimmerman and Hunter).

[126] 267 NLRB 451 (1983).

stantive reason the union is ultimately unable to obtain further consideration of the underlying grievance, the union would be required to provide backpay. In justifying this result, the panel reasoned that uncertainties regarding the future processing of the grievances are the direct products of the union's unlawful action and that it is proper to resolve any uncertainty in favor of the injured employee and not the wrongdoer. Accordingly, the panel ruled that when as a result of the union's misconduct, the union is unable to obtain an arbitrator's resolution of the grievances, the Board will presume that if the original grievances had been fully and fairly processed, the grievances would have been found meritorious and the grievants would have been reinstated with backpay.

b. Recovery of Losses for Appearing Before Union Trial Board

In *Baker Co.*,[127] a Board panel considered the issue of whether two employees who were subjected to retaliatory union disciplinary proceedings were entitled to recover lost wages and benefits as well as travel and other expenses resulting from their appearance before a union trial board.

After two employees at the employer's Fresno, California facility filed unfair labor practice charges against the respondent local union in May 1983, the respondent union's district council notified them that they would be tried on 16 June at its Emeryville, California office, and that it would not reimburse them for any of the costs incurred in attending.

Relying on *Transit Union Division 825 (Transport of New Jersey)*,[128] and *Television Wisconsin*,[129] the administrative law judge refused to grant the General Counsel's and charging parties' request for lost wages and travel and other expenses they may have incurred in attending the 16 June trial.

The Board panel reversed and ordered as part of the remedy that the respondent local union and District Council make the charging parties whole for any loss of earnings and benefits as well as travel and other expenses they may have incurred in attending the trial board proceeding. The panel noted that in *Transit Union* and *Television Wisconsin*, the Board was not presented with, and did not address, the issue of lost wages resulting from a union's unlawful action. The panel relied on *Frank Mascali Construction Co.*,[130] in which the Board upheld the judge's finding

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[127] *Laborers Northern California Council (Baker Co.)*, 275 NLRB 278 (Chairman Dotson and Members Hunter and Dennis).

[128] 240 NLRB 1267, 1271 fn. 24 (1979). Here, the Board refused to grant the General Counsel's request for travel and other expenses received by an employee member in defending against the respondent's unlawful intraunion charges.

[129] 224 NLRB 722, 781 (1976). Here, the Board affirmed the administrative law judge's denial of the General Counsel's and charging party's request for reimbursement of legal expenses incurred by employees in defending against the union's retaliatory damage suit brought against them in the state court.

[130] 251 NLRB 219, 224 (1980), enf. mem. 697 F.2d 294 (2d Cir. 1982), cert. denied 459 U.S. 988 (1982).

that the respondent union initiated internal union proceedings against employees in retaliation for their intraunion activities and filing of unfair labor practice charges against the union and ordered the employees be made whole for any resulting loss of wages or other benefits. The panel also cited *Radio Officers (A. H. Bull Steamship) v. NLRB*,[131] in which the union unlawfully refused to refer or clear employees for work or caused an employer to discharge or discriminate against employees for unlawful reasons, in support of its conclusion that "the Board has consistently ordered backpay to make aggrieved parties whole for any losses of wages and other benefits resulting from the union's unlawful conduct."

Concerning the General Counsel's request for travel and other expenses, the Board panel concluded that the charging party's employees apparently incurred travel expenses as a direct result of the respondent's unlawful conduct. The panel relied on *Corbesco*,[132] in which the Board adopted the administrative law judge's finding that there was "a sufficient nexus" between the respondent union's discriminatory refusal to refer nonunion employees for work and the expenses an employee incurred in traveling to Florida on the implied advice of the union to reinstate his union membership to warrant reimbursement of travel costs.

The panel also relied on *Power Systems*[133] and similar cases in which the Board has ordered an employer to make an employee whole for all the legal expenses he incurred in defending against the employer's retaliatory lawsuit. The panel concluded that "[t]here is no valid basis for distinguishing between making an employee whole for legal expenses incurred in defending against an employer's retaliatory lawsuit and reimbursing an employee for travel and other expenses incurred in resisting retaliatory union charges." (275 NLRB at 280.)

J. Equal Access to Justice Act

The Equal Access to Justice Act, 5 U.S.C. § 504 (EAJA) and the Board's Rules promulgated thereunder[134] permit eligible parties that prevail in litigation before the Agency and over the Agency in Federal court, in certain circumstances, to recover litigation fees and expenses from the Agency. Section 504(a)(1) provides that "an agency that conducts an adversary adjudication is required to award to a prevailing party fees and other expenses incurred by the party . . . unless the adjudicative officer of the agency finds that the position of the agency . . . was substantially justified or that special circumstances make an award unjust." Section 504(a)(2) provides that within 30 days of a final

[131] 347 U.S. 17, 28–33, 52–55 (1954).
[132] *Carpenters Local 953 (Corbesco)*, 272 NLRB 843 (1984).
[133] 239 NLRB 445 (1978).
[134] Board Rules and Regulations, Secs. 102.143 through 102.155.

disposition of the case, a party seeking an award must file with the agency an application which shows that the party prevailed below and is eligible under the Act to receive the award,[135] itemizes the amount sought, and alleges that the position of the agency was not substantially justified.

Acting on the application, the adjudicative officer of the agency, under Section 504(a)(3), may reduce the amount to be awarded, or deny an award, when the party during the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. Section 504(b)(1)(A) requires the award of fees and expenses to be "based upon prevailing market rates for the kind and quality of the services furnished," except that an "expert witness shall not be compensated at a rate in excess of the highest rate for expert witnesses paid by the agency" and "attorney or agent fees shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceeding involved, justifies a higher fee."

In *Physicians Memorial Hospital*,[136] the Board adopted the judge's conclusion that the respondent's application for an award of attorney fees and expenses should be dismissed. The judge noted that his crediting of the respondent's witnesses, Blair and Stallman, was an element of his determination that the General Counsel had not established a prima facie case in the underlying proceeding. The judge thus concluded at 1334 that "[h]ad the testimony of [General Counsel's witnesses] Johns and Burke been credited over that of Blair and Stallman, the result in this case may well have been different. In any event, it cannot be said that the General Counsel's position in attributing the Respondent's actions in this matter to union animus was unreasonable."

While emphasizing that the General Counsel's investigation normally should include interviews with all important available witnesses, the Board agreed with the judge that, in the particular circumstances of this case, it was unnecessary to examine the adequacy of the General Counsel's investigation. Thus, the Board stated, "even assuming as true the Respondent's assertion that the General Counsel failed to interview Supervisors Blair and Stallman during the investigation, such circumstances would not affect the result here." The Board concluded that "whether or not the General Counsel obtained during the investigation the testimony the supervisors later gave at the hearing, he would have been substantially justified in issuing the complaint."

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[135] 5 U.S.C. § 504(b)(1)(B) defines "party" to exclude individuals and certain enterprises from the coverage of the Act.

[136] 273 NLRB 1332 (Chairman Dotson and Members Hunter and Dennis).

K. *Deferral to Arbitration*

The jurisdiction of the Board over unfair labor practices is exclusive under Section 10(a) of the Act and is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." However, consistent with the congressional policy to encourage utilization of agreements to arbitrate grievance disputes, the Board, in the exercise of its discretion, will under appropriate circumstances withhold its processes in deference to an arbitration procedure.

The Board has long held that when an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, the Board will defer to the arbitration award if the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act.[137]

In the seminal case of *Collyer Insulated Wire*,[138] the Board majority articulated several factors favoring deferral: a dispute arising within the confines of a long and productive collective-bargaining relationship; lack of employer animosity to employees' exercise of protected rights; a contract providing for arbitration in a very broad range of disputes; an arbitration clause which clearly encompasses the dispute at issue; employer willingness to utilize arbitration to resolve the dispute; and a dispute which is eminently suited to resolution by arbitration. In years following *Collyer*, the Board further refined the deferral doctrine and applied it to other situations, including cases involving 8(a)(3) allegations.

During the report year, the Board had occasion to reconsider its policy concerning deferral to arbitration in a number of cases before it. In one such case, *Reichhold Chemicals*, the Board panel held, contrary to an administrative law judge, that deferral to an arbitration award was appropriate under the principles of *Olin Corp.*[140]

In *Olin Corp.*, a majority of the Board endorsed the longstanding *Spielberg* standards for deferral including the condition that the arbitrator must consider the unfair labor practice issue. The Board in *Olin*, 268 NLRB at 574, additionally stated that it would find the arbitrator has adequately considered the unfair labor practice issue if "(1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. In this respect, differences, if any, between the contractual and statutory standards of review should be weighed

[137] *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).
[138] 192 NLRB 837 (1971).
[139] 275 NLRB 1414 (Chairman Dotson and Members Hunter and Dennis).

by the Board as part of its determination under the *Spielberg* standards of whether an award is 'clearly repugnant' to the Act."

Thus, the Board majority stated that unless an arbitrator's award is "palpably wrong," i.e., unless it is not susceptible to an interpretation consistent with the Act, it will defer. Finally, the Board majority added in *Olin* that the party seeking to have the Board reject deferral must show that the deferral standards have not been met and that "[t]o the extent that *Suburban Motor Freight*[141] . . . provided for a different allocation of burdens in deferral cases, it is overruled." (268 NLRB at 574 fn.8.)

In the report year case, *Reichhold Chemicals*, the unfair labor practice complaint alleged that the respondent unilaterally changed the bargaining unit's composition without bargaining in good faith with the union. In his initial decision the judge found that the respondent violated Section 8(a)(1) and (5) by promoting three bargaining unit employees, chief operators, to statutory supervisors. The supervisors continued to perform most of their prior duties, and the respondent eliminated three chief operator positions.

Relying on cases issued prior to *Olin*, the judge rejected the respondent's contention that the case should be deferred to the arbitrator's award upholding the respondent company's change. The Board remanded the case to the judge for consideration under the then-new *Olin* standard. In his supplemental decision the judge again rejected deferral. Reversing the judge, the Board panel deferred and dismissed the complaint.

The panel found that the arbitral proceedings were fair and regular, and that the parties generally presented the arbitrator with facts relevant to the statutory issue. The panel further found, contrary to the judge, that the contract interpretation issue before the arbitrator and the unfair labor practice issue before the Board were factually parallel. The panel (275 NLRB at 1416) held that "both turn on whether the contract permitted the chief operators' promotions, and therefore they should be resolved by the same facts, i.e., the parties' collective-bargaining agreements, relevant bargaining history, and past practice." In analyzing the arbitrator's award, the panel stated:

> The arbitrator found that the contract's management-rights clause gave the Respondent authority generally to direct its work force, and that neither the recognition clause nor any other provision restricted this right. [Ibid.]

The panel reasoned that a similar finding by the Board would resolve the statutory issue because "[i]f the Board found that the contract permitted this action, the Board would then have found that the Respondent did not violate its statutory bargaining obligation." Accordingly, as the award was susceptible to an inter-

[140] 268 NLRB 573 (1984).

pretation consistent with the Act, the panel concluded that the General Counsel has not met the burden of "demonstrating defects in the arbitral award."

The Board applied the principles of *Olin* in deciding another important case during the report year in *Alpha Beta Co.*[142]

In *Alpha Beta* the employer's unit employees represented by two Retail Clerks locals participated in a sanctioned sympathy strike. The employer discharged 15 of the sympathy strikers because they refused to work when no pickets were present at their respective worksites. Five other sympathy strikers were discharged because they failed to report to work in a timely manner after the strike sanctions were lifted.

The unions filed grievances on behalf of all the discharged employees and pursuant to the parties' collective-bargaining agreement's grievance/arbitration clause, a board of adjustment was convened, but deadlocked on a mutually agreeable solution. As a result of private discussions, the parties reached a settlement agreement wherein the group of 15 employees would be reinstated without backpay, and the other 5 would be considered voluntary quits. The unions informed the employees of the terms of the settlement agreement and, although they were displeased with the provision for no backpay, they authorized the unions to accept the settlement agreement. These employees then decided to seek backpay through the Board's processes.

The administrative law judge refused to defer to the settlement agreement as it applied to the 15 employees because the grievances had not been pursued to arbitration and any deferral to the settlement agreement under *Spielberg* was improper and repugnant to the purposes and policies of the Act. However, concerning the other five dischargees, the judge found that their discharges were lawful and that deferral was not repugnant to the Act.

In reversing the administrative law judge concerning the group of 15 and finding deferral to the settlement agreement appropriate, the Board agreed with the view of former Member Penello's dissent in *Roadway Express*,[143] in which he stated his belief that "the *Spielberg* tests for deferral apply to grievance settlements as well as arbitration awards" and that "[t]he Board should encourage employers and unions to negotiate their differences arising during the term of their bargaining agreement, to discuss and settle grievances, and, if necessary, to arbitrate their differences." (273 NLRB at 1547.)

The Board further agreed that deferral was appropriate to settlements arising from the parties' contractual grievance/arbitration procedures because they furthered the national labor policy which favors private resolution of disputes when the de-

[142] 273 NLRB 1546 (Chairman Dotson and Members Hunter and Dennis).
[143] 246 NLRB 174, 177 (1979).

ferral principles of *Collyer Insulated Wire* and *Spielberg*, as recently affirmed in *Olin Corp.* and *Metropolitan Edison Co.*,[144] have been satisfied.

The Board noted that in *Olin* it stated its commitment to a policy of full, consistent, and evenhanded deference to the deferral process when appropriate safeguards for statutory rights are satisfied. Using this standard, the Board thus determined that because the grievance procedure leading up to the settlement agreement was fair and regular all parties had agreed to be bound, including the discharged employees; and that even though the employees were not directly involved in the settlement negotiations, they were fully informed about the specific terms of the agreement. Because the final decision was left up to them and they had authorized the unions to accept the settlement agreement, the employees were bound by their acts and those of their collective-bargaining representatives.

The Board stated that in order to prove that the results of the settlement were "clearly repugnant" to the principles and policies of the Act, the same test as set out in *Olin* for determining if an arbitrator's award was clearly repugnant applies and that test is not whether the Board would have reached the same result, but whether the award is "palpably wrong" as a matter of law.

The Board found that the settlement of the contractual grievances was not "palpably wrong" under the law because it resulted from negotiations between the respondents and the unions within the context of their contractual grievance/arbitration procedures. Further, the Board stated that it was clear that the settlement agreement was intended to resolve the parties' contractual dispute over the discharges of employees who failed to report work in connection with their sympathy strike and that the terms of the settlement agreement suggest that both the respondents and the unions made concessions to settle the grievances without going to arbitration, with the unions' primary concern being getting the employees' jobs back. Finally, the Board noted that the employees may have agreed to accept the settlement solely because they wished to pursue the matter of backpay before the Board but that this was insufficient to prove the settlement of the grievances repugnant to the Act.

In *Cone Mills Corp.*,[145] the Board overruled the administrative law judge, who found that deferral to the arbitrator's award, ordering reinstatement without backpay, was not appropriate under *Spielberg*. The respondent allegedly discharged an employee for altering her scheduled break without notifying her supervisor and for refusing to leave the plant when instructed to do so. The discharge was submitted to arbitration in accord with the collective-bargaining agreement.

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[144] 460 U.S. 693 (1983).

[145] 273 NLRB 1515 (Chairman Dotson and Members Hunter and Dennis).

The arbitrator found that the employee had altered her breaktime to pursue a grievance and that the respondent did not have "just cause" under the collective-bargaining agreement for discharging the employee for unilaterally changing her breaktime to do so. He further found, however, that her refusal to leave when instructed was insubordination under the "just cause" doctrine of the agreement and, although not sufficient grounds for discharge, did warrant discipline.

The arbitrator balanced the respondent's misconduct regarding the employee's protected activity in pursuing the grievance against the employee's misconduct. He found that the employee should be reinstated without backpay, reasoning that if the discharge were sustained in this case the employees would not have the assurance that the collective-bargaining agreement would protect them when they engaged in concerted activity while an award of backpay would provide company supervisors with little assurance that their instructions would be obeyed by employees.

Based on the stipulated record, including the arbitrator's decision, the administrative law judge found that the respondent's only motive for the discharge was the employee's protected activity, and that therefore the discharge was unlawful. He found that the arbitrator's award, in upholding the discipline for the employee's insubordination and compromising the backpay, was "clearly repugnant." The judge recommended a complete make-whole remedy because he found that the employee's insubordination was condoned or at least provoked by the respondent.

The Board found that the judge substituted his judgment for the arbitrator's, thereby ignoring a fundamental tenet of *Spielberg*—that deferral is appropriate even when the arbitrator reaches a result different from the one the Board might have reached had it considered the case de novo. The Board noted that it is well settled that an arbitrator's failure to give a complete make-whole remedy does not render an award clearly repugnant,[146] and that in reaching a decision the arbitrator may consider the relative merits of the positions of the parties before him and may determine to give a complete award or a partial award depending on how the arbitrator assesses the merits of the situation.[147]

The Board found that in the instant case the arbitrator, in fashioning the award, balanced the competing claims of the parties by adjusting the equities involved to reach a harmonious result. Applying the "clearly repugnant" standard set forth in *Olin*, i.e., that the arbitrator's decision is not susceptible to an interpretation consistent with the Act, the Board found that the General Counsel did not meet his burden and prove that the arbitrator's award was palpably wrong.

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[146] See *Combustion Engineering*, 272 NLRB 215 (1984).
[147] *Crown Zellerbach Corp.*, 215 NLRB 385, 387 (1974).

In *Spann Maintenance Co.*,[148] the Board addressed the issue of deferral to a contractual grievance and arbitration procedure when that procedure had been started but not completed. In this case the union filed a grievance over the discharge of employee Lewis. During the grievance process, the employer offered to reinstate Lewis to a job at another location but refused to grant her backpay or to reinstate her seniority. As the offer was not acceptable to Lewis, the union rejected it. The union then set in motion the process of selecting an arbitrator to arbitrate Lewis' grievance. Shortly thereafter, the union decided that it would not take the grievance to arbitration but did not inform the employer of this decision. Instead, the union continued to try to obtain a more generous settlement offer from the employer. Two months later it wrote to the employer that an arbitrator should be selected to hear the case; however, this was never done. After further efforts to reach an acceptable settlement failed, Lewis filed an unfair labor practice charge. Lewis was later contacted directly by the employer's personnel manager and ultimately accepted her offer of reinstatement at a different location. No mention was made whether the reinstatement constituted settlement of the grievance, but the grievance was never withdrawn.

The Board panel majority held that under *United Technologies Corp.*,[149] it should defer to the grievance-arbitration process, rather than rule on the merits of the case, because that process had been invoked but not completed. The majority noted that although the union had exhausted the steps of the grievance procedure prior to arbitration, it had not withdrawn the grievance, taken the grievance to arbitration, or notified the employer that it was waiving arbitration. The majority observed that until the union either pursued arbitration or relinquished this option, the grievance and arbitration procedure had not run its course and, accordingly, the Board should stay the exercise of its processes until the procedure had been completed.

Member Dennis dissented on the basis that the employer had not sought deferral to the grievance-arbitration process, but rather to a purported settlement. She also reasoned that it was not premature for the Board to resolve the merits of the case, as the parties had made an honest attempt to resolve the grievance and had failed to do so.

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[148] 275 NLRB 971 (Chairman Dotson and Member Hunter; Member Dennis dissenting).
[149] 268 NLRB 557 (1984).

V

Supreme Court Litigation

During fiscal year 1985, the Supreme Court decided three cases in which the Board was a party.

A. Union Restrictions on Member Resignations During a Strike

In *Pattern Makers*,[1] a provision in the union's constitution prohibited members from resigning "during a strike or lockout, or at a time when a strike or lockout appears imminent." The union fined 10 members who, in violation of this provision, submitted resignations and returned to work during a strike called by the union. The fines were court collectible and were about equal to the members' earnings during the strike. The Board held that the union's enforcement of such a rule restricting resignation from union membership restrained and coerced employees in the exercise of their Section 7 right to refrain from concerted activities and therefore violated Section 8(b)(1)(A) of the Act.

The Supreme Court,[2] resolving a conflict in the circuits,[3] upheld the Board's decision as a reasonable construction of Section 8(b)(1)(A). The Court found that by outlawing the closed shop and providing in Section 8(a)(3) that employees may be compelled to submit to union "membership" only to the extent of paying union dues under a valid union-security agreement, "Congress in 1947 sought to eliminate completely any requirement that . . . employee[s] maintain full union membership"; a union rule imposing restrictions on an employee's right to resign was inconsistent with this fundamental policy of the Act favoring voluntary unionism (473 U.S. at 104–105). The Court also noted that, although by enacting Section 8(b)(1)(A) Congress did not intend to interfere with a union's ability to make and enforce rules concerning its "internal affairs," union rules restricting the right of members to resign were uncommon, if not unknown, in

[1] *Patern Makers v. NLRB*, 473 U.S. 95, affg. 724 F.2d 57 (7th Cir. 1983).

[2] Justice Powell delivered the opinion of the Court. Justice White filed a concurring opinion. Justice Blackmun, joined by Justices Brennan and Marshall, dissented, and Justice Stevens filed a separate dissenting opinion.

[3] Contrary to the Seventh Circuit, which had upheld the Board's decision in *Pattern Makers*, the Ninth Circuit had held that a union may impose restrictions on its members' right to resign during a strike. *Machinist Local 1327 (Dalmo Victor) v. NLRB*, 725 F.2d 1212 (9th Cir. 1984), vacated and remanded, No. 84-494 (July 1, 1985).

1947, and that therefore "allowing unions to 'extend an employee's membership obligation through restrictions on resignation' would 'expan[d] the definition of internal action' beyond the contours envisioned by the Taft-Hartley Congress" (473 U.S. at 103). The Court found further that the Board's decision was supported by language and reasoning from previous decisions[4] in which the Court had held that the lawfulness of union discipline was premised on the freedom of members "to leave the union and escape the rule," and that the "vitality of § 7" requires that union members be free to resign and return to work during a strike (id. at 104).

The Court rejected the union's contention that rules restricting the right to resign are protected by the proviso to Section 8(b)(1)(A), which leaves a union free "to prescribe its own rules with respect to the acquisition or retention of membership therein." The Court found that its prior decisions and the legislative history of the proviso supported the Board's view that the proviso allows unions only to make rules concerning the admission and expulsion of employees seeking to acquire or retain membership, but does not protect rules forcing employees to retain membership against their will (473 U.S. at 108–110). The Court further rejected the union's contention that Congress did not protect the right to resign in the "right to refrain" language of Section 7, concluding that "[t]he ambiguous legislative history upon which the [union] rel[ies] falls far short of showing that the Board's interpretation of the Act is unreasonable" (id. at 112). Finally, the Court found that because the Board reasonably concluded that restrictions on the right to resign impair a "policy Congress has imbedded in the labor laws," it was irrelevant whether, as the union contended, the rule at issue would have been permissible under the common law of voluntary associations (id. at 112–114).

The dissenting Justices concluded that the legislative history of the Taft-Hartley amendments and the language of the proviso to Section 8(b)(1)(A) supported the union's position that Congress did not intend to prohibit restrictions on the right to resign during a strike. They further found that the Court's decision to the contrary "threatens the power to act collectively that is at the center of the Act." (473 U.S. at 127).

B. Exclusion from Bargaining Units of Relatives of Owner-Managers of a Closely Held Corporation

Action Automotive[5] involved the question whether the Board has the authority to exclude from a collective-bargaining unit

[4] *See Scofield v. NLRB*, 394 U.S. 423, 430 (1969); *NLRB v. Textile Workers*, 409 U.S. 213, 217–218 (1972).

[5] *NLRB v. Action Automotive*, 469 U.S. 490, revg. 717 F.2d 1033 (6th Cir. 1983).

employees who are relatives of the owner-managers of a closely held corporation that employs them, without finding that the employees receive special job-related benefits. Following a representation election in which the union received a plurality of votes in each of two bargaining units, the Board sustained determinative challenges to the ballots of a clerk who worked at the company's headquarters and was the wife of the company's president and one-third owner and of a cashier who was the mother of the three brothers that owned and managed the company and who lived with one of her sons. The Board found that the two employee-relatives should be excluded from the bargaining units because, by virtue of the nature of their family relationships, their interests were more closely aligned with management than with those of the unit employees.

The Supreme Court,[6] resolving a conflict in the circuits,[7] upheld the Board's family exclusion policy as a reasonable application of its broad requirement, in determining appropriate bargaining units under Section 9(b) of the Act, that unit employees share a "community of interest" in order to minimize conflicts of interest in the collective-bargaining process. The Court concluded that, although family members may otherwise fall within the statutory definition of "employee" under Section 2(3) of the Act,[8] "[w]hen [family-related] criteria satisfy the Board that the employee-relative's interests are aligned with management . . . he may be excluded from the unit even though he enjoys no special job-related benefits" (469 U.S. at 495).

The Court noted that "the Board considers a variety of factors in deciding whether an employee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from a bargaining unit," such as "whether the employee resides with or is financially dependent on a relative who owns or manages the business" and the extent to which the owner or manager is actively involved in directing the company (469 U.S. at 495).[9] The Court concluded that "[c]lose relatives of management, particularly those who live with an owner or manager, are likely to 'get a more attentive and sensitive ear to their day-to-

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[6] Chief Justice Burger delivered the opinion of the Court. Justice Stevens, joined by Justices Rehnquist and O'Connor, dissented.

[7] The Sixth Circuit had held that the Board may exclude employee-relatives from a bargaining unit only when they enjoy special job-related privileges. See *NLRB v. Sexton*, 203 F.2d 940 (6th Cir. 1953); *Cherrin Corp. v. NLRB*, 349 F.2d 1001 (6th Cir. 1965), cert. denied 382 U.S. 981 (1966); *NLRB v. Hubbard Co.*, 702 F.2d 634 (6th Cir. 1983). The Board's family exclusion policy had been upheld, however, by the Seventh, Ninth, and Fifth Circuits. See *NLRB v. Caravelle Wood Products*, 504 F.2d 1181 (7th Cir. 1974); *Linn Gear Co. v. NLRB*, 608 F.2d 791 (9th Cir. 1979); *NLRB v. H. M. Patterson & Son*, 636 F.2d 1014 (5th Cir. 1981).

[8] Sec. 2(3) excludes from the Act's definition of "employee" "any individual employed by his parent or spouse." In the context of corporations, the Board has limited the Sec. 2(3) exclusion to the children or spouse of an individual with at least a 50-percent corporate ownership interest. See *Cerni Motor Sales*, 201 NLRB 918 (1973).

[9] The Court also noted that "whether the employee receives special job-related benefits such as high wages or favorable working conditions" is also relevant to any "community of interest" determination (469 U.S. at 495).

day and long-range work concerns than would other employees,'" and that "it is reasonable for the Board to assume that the family member who is significantly dependent on a member of management will tend to equate his personal interests with the business interests of the employer" (id. at 496). The Court added that "[t]he very presence at union meetings of close relatives of management could tend to inhibit free expression of views and threaten the confidentiality of union attitudes and voting" (ibid.).

The dissenting Justices were of the view that the Board's family exclusion policy was improperly based solely on the likelihood that employee-relatives "are likely to be promanagement and hostile to union representation." They would have required a showing of special job privileges in order to exclude employee-relatives from a bargaining unit. (469 U.S. at 499, 502.)

C. The Rules on Containers as Applied to "Shortstopping" and "Warehousing" in the Shipping Industry

Longshoremen ILA (ILA II)[10] presented the question whether the ILA's Rules on Containers constituted unlawful secondary activity under Sections 8(b)(4)(B) and 8(e) when applied to certain trucking and warehouse practices in the containerized shipping industry. The collectively bargained for Rules on Containers, negotiated in response to the reduction of on-pier cargo handling work that resulted from containerization, generally require that cargo containers owned or leased by marine shipping companies that are loaded or unloaded within 50 miles of the port be handled by longshoremen. Shipping companies that allow their containers to be handled in violation of the rules are subject to fines.

In *ILA I*,[11] the Supreme Court had remanded the Rules to the Board and directed it, in determining whether they had a valid "work preservation" objective or an unlawful "work acquisition" objective, to "focus on the work of the bargaining unit [longshoremen] employees, not on the work of other employees who may be doing the same or similar work." 447 U.S. at 507. On remand the Board, while generally approving the rules as having a lawful work preservation objective, invalidated the rules as applied to "shortstopping" and "traditional" warehouse practices within the 50-mile limit. "Shortstopping" refers to the traditional trucking practice, which has continued postcontainerization, of picking up cargo at the pier, driving a short distance to a central facility, and then unloading and reloading the cargo for reasons unrelated to marine shipping, such as to meet weight, safety, or delivery requirements of the trucking business. Similarly, certain warehouses have always performed some loading and unloading

[10] *NLRB v. Longshoremen ILA*, 473 U.S. 61, affg. 734 F.2d 966 (4th Cir. 1984).
[11] *NLRB v. Longshoremen ILA*, 447 U.S. 490 (1980).

of cargo for storage purposes unrelated to marine transportation, and such traditional cargo handling is still performed by warehouses even though cargo is shipped in containers. The Board found that because containers can be moved directly to and from warehouses and truck terminals without loading or unloading at the piers, the necessity for such longshore labor "essentially was eliminated." The Board concluded that the rules sought to preserve such "eliminated" work by claiming work traditionally performed by truckers and warehousers for purposes unrelated to marine transportation and, to this extent, they thus had an unlawful work acquisition objective.

In *ILA II*, the Supreme Court[12] rejected the Board's view that the Rules on Containers were unlawful as applied to shortstopping and traditional warehousing. The court found that, "by focusing on the effect that the Rules may have on 'shortstopping' truckers and 'traditional' warehousers, the Board contravened" the Court's direction in *ILA I* that "such extra-unit effects, 'no matter how severe,' are 'irrelevant' to the analysis" whether the Rules have a valid work preservation objective (473 U.S. at 79). The Court explained that, given the rules' "clear primary objective to preserve work in the face of a threat to jobs," any "extra-unit effects . . . alone provide an insufficient basis for concluding that the agreement has an unlawful secondary objective" (ibid.). The Court further found that the Board had erred by concluding that work "eliminated" by technological change can never be the object of a work preservation agreement. The Court reasoned that the jobs of bargaining unit employees under such circumstances "were no less threatened, nor was their attempt to preserve them any less primary," than if the work had simply been subcontracted to nonunion workers. Therefore, "'[e]limination' of work in the sense that it is made unnecessary by innovation is not of itself a reason to condemn work preservation agreements under §§ 8(b)(4)(B) and 8(e); to the contrary, such elimination provides the very premise for such agreements" (id. at 80–81).

The dissenting Justices were of the view that concerning shortstopping and traditional warehouse work the rules have an unlawful secondary objective. For, "both the intent and effect of this part of the Rules were to obtain work not traditionally done by longshoremen" (473 U.S. at 94).

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[12] Justice Brennan delivered the opinion of the Court. Justice Rehnquist, joined by Chief Justice Burger and Justice O'Connor, dissented.

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VI

Enforcement Litigation

A. Introduction

In fiscal year 1985 the Board had its most successful year ever in the courts of appeals. Over 83 percent of the enforcement and review cases resulted in a totally favorable decision for the Board. Only once before in the Board's history had such a figure been achieved. In addition, in less than 5 percent of the cases was the Board's order totally rejected, a figure never before achieved.

B. Board Procedure

The Civil Service Reform Act of 1978[1] created the Federal Senior Executive Service. In relevant part, that statute requires the creation of a performance appraisal system for members of the Service, a category that includes the Board's Regional Directors. The delegated duties of these Directors include making initial determinations in representation matters on behalf of the Board. In *NLRB v. Ohio New & Rebuilt Parts*,[2] the court addressed the contention that the appraisal system adopted by the Board pursuant to the Civil Service Reform Act created a "risk of bias" in the Directors' exercise of their quasi-judicial functions by linking the Directors' pay to their performance of those functions. The court noted that in addressing a similar contention, the Supreme Court held in *Schweiker v. McClure*[3] that statutorily designated hearing officials are presumed to be unbiased and that persons attacking the hearing procedures must show that the procedures adopted "are not fair or that different or additional procedures would reduce the risk of erroneous deprivation of . . . benefits." The Sixth Circuit also noted that a challenge to the constitutionality of the Senior Executive Service itself had been rejected in the District of Columbia Circuit.[4] The court then turned to the specific contention raised here—namely, that Regional Directors would tend to act with "reckless speed" in order to score well on the effectiveness and efficiency critical

[1] 5 U.S.C. §§ 3131 et seq. and 4311 et seq.
[2] 760 F.2d 1443 (6th Cir.)
[3] 456 U.S. 188, 195–196, 200 (1982).
[4] *Canton Health Care Center v. U.S.*, 750 F.2d 1093 (1984) (mem.).

element on which their performance is evaluated and hence enhance their remuneration. In rejecting that contention, the court noted that the performance appraisal system gave equal weight to effectiveness and efficiency of performance, quality of casehandling, achievement of agency goals, and staff relations and hence restrained any tendency by Regional Directors to give undue emphasis to speed in casehandling. Accordingly, the court held that no denial of due process or equal protection had been made out.

C. Board Jurisdiction

The Board's assertion of jurisdiction over a day care center operated by the Salvation Army was challenged in a case arising in the First Circuit.[5] The center, which provided care for about 60 children, gave no religious instruction and gave only a half hour a day for such guided activities as art and music. The staff members were selected without regard to creed, and no significant condition of their employment was of a religious nature. Only one member of the staff—the cook—was identified as possibly a member of the Salvation Army. At the initial stages of this proceeding, the director was in fact a member of the Salvation Army, but by the time of the administrative hearing he had been succeeded by a layperson. The director, not the central office, had primary, if not sole, responsibility for the employment, management, and discipline of the staff and for the operation of the center. The monthly parent council meetings are attended by a representative of the Salvation Army, who says a prayer to remind the parents of the Salvation Army's "link" with the center. There is no requirement that the parents be Christians, let alone members of the Salvation Army. The critical message to the parents is that the function of the center is to develop the whole child, not to teach religious doctrine or convert the child or the parent to Christianity.

After the Board certified the union as representative of the center's staff, the parties began bargaining. Almost immediately, however, bargaining foundered over the center's insistence on the inclusion of an "ecclesiastical clause" providing that both parties recognize that the center "is an integral part of the mission of the Army." The union filed a refusal-to-bargain charge, and at the hearing the center tendered evidence to support its contention that the Board lacked jurisdiction because of the affiliation between the center and the Salvation Army. The center contended that its activities were "church related" and hence beyond the Board's jurisdiction by virtue of the Supreme Court's decision in *Catholic Bishop*.[6] The Board rejected that argument,

[5] *NLRB v. Salvation Army of Massachusetts*, 763 F 2d 1.
[6] *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

distinguishing *Catholic Bishop* as confined to "teachers in church-operated schools" and hence inapplicable to day care centers because they "are primarily concerned with custodial care of young children, and only secondarily concerned with education." In agreeing with the Board, the First Circuit noted that the program involves no religious instruction and that neither the teachers, children, nor parents were chosen for their religious affiliation. Although the court agreed that the center fulfills the religious mission of the Salvation Army, there is no evidence that the center serves anything other than a secular function with respect to the teachers, children, or parents. Accordingly, the court found that the Board properly asserted jurisdiction.

D. Successorship

The question of whether one employer is a successor to another employer—and hence to the predecessor's bargaining obligation—arises frequently. In one case[7] Spencer Foods (SF) closed its Spencer plant after unsuccessfully negotiating for a new collective-bargaining agreement with the union that represented the production and maintenance employees. SF and Land of Lakes (LOL) subsequently agreed that LOL would purchase two SF plants, including the Spencer plant. For tax purposes, LOL purchased all of SF's stock in lieu of purchasing the plants directly. The Spencer plant reopened after a 16-month hiatus. SF continued as a corporate entity, but its articles of incorporation were changed to allow it to operate as a farmer cooperative. The board of directors was reconstituted, composed entirely of LOL officials. SF's president remained with the additional title of president of LOL's beef division. LOL invested $1.3 million in plant improvements. When the plant reopened, about half of the supervisors had worked at the old Spencer plant. Production was reduced from two shifts to one and from part kosher to totally kosher. In staffing the plant, SF accepted applications from all interested persons, including former employees of the Spencer plant. SF, however, unlawfully used hiring criteria designed to reduce the number of former, unionized Spencer employees in the new work force, and only a small number of old Spencer employees were hired for the new operation.

The Board concluded that although the same corporation continued to own and operate the plant, the new operation did not constitute the same employing entity. In so finding, the Board relied on the 16-month hiatus between the plant's closing and its reactivation, the substantial change in top management and plant supervisors, the elimination of four of six plants, the drastic reduction in the work force, the elimination and addition of customers, a partial change in suppliers reflecting SF's new status as

[7] *Food & Commercial Workers Local 152 (Spencer Foods) v. NLRB*, 768 F.2d 1463 (D.C. Cir.).

a LOL subsidiary, and the infusion of new capital. The court rejected the Board's conclusion, relying heavily on the fact that the parties retained SF's corporate structure in order to reap valuable tax advantages associated with corporate continuity; the court reasoned that the parties accordingly had to accept the labor obligations also associated with corporate continuity. The court, however, agreed with the Board that the record revealed a broader form of business reorganization than a mere stock transfer and, therefore, that the resolution of the successorship issue required a detailed factual analysis of whether there was substantial continuity in the employing industry. In making this inquiry, the court found no evidence that the 16-month hiatus would have affected employee attitudes regarding unionization because SF had been engaged in efforts to reopen throughout the hiatus and SF employees had considered themselves on temporary layoff. After examining the various changes in supervision and operations relied on by the Board, the court concluded that they were not the sort that would have affected employee attitudes toward union representation. Accordingly, the court concluded that the Board erred in finding no successorship.

E. Concerted Activity

Section 7 of the Act gives employees the right "to engage in . . . concerted activities for . . . mutual aid or protection." In *Alleluia Cushion Co.*,[8] the Board held that an individual employee who files a safety complaint is presumed to be engaged in protected concerted activity in the absence of evidence that fellow employees disavow that action. Following repeated court rejection of that rationale, the Board reversed *Alleluia Cushion* and held that the language of the statute and the legislative history required that the term "concerted" be read literally. Accordingly, the Board held that in general "concerted activities" would be held protected only if they involved two or more employees.[9] In *Ewing v. NLRB*,[10] the issue came before the Second Circuit, which had itself reversed the Board in a case in which the Board had relied on the *Alleluia* rationale.[11] The Second Circuit again reversed. In the court's view the Supreme Court's intervening decision in *NLRB v. City Disposal Systems*[12] precluded a finding that the term "concerted" must be read literally. In *City Disposal*, the Court had held that an employee who asserted a right derived from a collective-bargaining agreement was acting "concertedly" even if he was acting alone.

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[8] 221 NLRB 999 (1975).
[9] *Meyers Industries*, 268 NLRB 493 (1984).
[10] 732 F.2d 1117, petition to review *Herbert F. Darling, Inc.*, 273 NLRB 346 (1984).
[11] *Ontario Knife Co. v. NLRB*, 637 F.2d 840 (1980).
[12] 465 U.S. 822 (1984).

F. Representation Issues

In *Midwest Piping Co.*,[13] the Board held that an employer rendered unlawful assistance to one of two rival unions when it entered into a collective-bargaining agreement with that union while a genuine question existed concerning which union represented a majority of its employees. In 1982, following criticism by some courts, the Board issued two decisions clarifying this doctrine. In *RCA Del Caribe, Inc.*,[14] the Board held that the mere filing of a representation petition by a rival union would no longer require or permit an employer to withdraw from bargaining or refuse to execute a contract with an incumbent union. In *Bruckner Nursing Home*,[15] the Board held that it would no longer find a violation of Section 8(a)(2) of the Act when two unrecognized unions are competing and the employer recognizes a union that represents an uncoerced majority of the employees. At the same time, however, the Board reaffirmed its position that once notified of the filing of a valid election petition with the Board, the employer must refrain from recognizing any of the rival nonincumbent unions.

The Board's new policy had its first test in a case before the Third Circuit.[16] In that case, the employer had recognized one union following a check of authorization cards conducted by the American Arbitration Association. Another union was also seeking to represent the employees, but a number of its supporters had been discriminated against by the employer several years earlier. Those unfair labor practices had not been fully remedied at the time of recognition of the first union and the second union was not advised of the card check. In finding that the recognition was unlawful, the Board relied on alternative grounds that (1) a real question concerning representation existed at the time of such recognition or (2) the recognized union did not represent an uncoerced majority. The second union's election petition had been filed contemporaneously with the earlier unfair labor practices and was still pending. In attacking the Board's application of the *Bruckner* doctrine here, the employer and the recognized union contended that the Board's holding was inconsistent with cases in which the Third Circuit had rejected application of the *Midwest Piping* rule. In rejecting this contention, the court found that the Board in *Bruckner* had made a satisfactory accommodation between the sometimes conflicting policies of prompt recognition of majority representatives and of uncoerced free choice in the selection of those representatives. The court noted that authorization cards are not a totally reliable indication of employee sentiment, for when competing unions solicit cards many em-

[13] 63 NLRB 1060 (1945).
[14] 262 NLRB 963 (1982).
[15] 262 NLRB 955 (1982).
[16] *Haddon House Food Products v. NLRB*, 764 F.2d 182.

ployees may sign cards for both. When the rival union has cards from 30 percent or more of the unit employees, the court agreed, there is a real possibility of such duplication. Accordingly, the court approved the Board's finding it unlawful to recognize one of two unrecognized unions after the other files an election petition supported by 30 percent of the unit employees. The court also noted that the Board's rule provides clear guidance for employers.

One recurring issue in Board elections is eligibility of new employees. The Board's policy is that an individual must be both hired and working on the eligibility date in order to participate in the election. In this connection, "working" means actual performance of bargaining unit work, as opposed to participating in training, orientation, or other preliminaries. A case involving the application of this rule came before the Seventh Circuit.[17] Contending that the purpose of the rule was simply to ensure employees' exposure to the arguments for and against unionization, the employer argued that the Board should adopt a "rule of reason" reflecting this rationale and, in addition, that the rule should be applied with less rigor with respect to service employees. The court rejected these arguments, concluding that the rule was a reasonable method of simplifying the identification of eligible voters, and emphasized the deference owed by the courts to both the Board's selection of rules and policies governing elections and its application of those rules.

G. Independent Contractors

Section 2(3) of the Act excludes from the definition of "employee" "any individual having the status of an independent contract." This definition had an unusual application in a Third Circuit case.[18] There the Board's finding of a violation turned on whether the individuals in question were employed by The News. For some years The News had contracted with T & T, Inc. to perform its mailroom and distribution functions. T & T's employees were represented by the Maillers Union. In October 1980 The News asked T & T to negotiate with the Mailers Union a proposal to consolidate some of the delivery routes and reduce the work force. When the Mailers rejected the proposal, The News hired new employees to do the work and barred T & T and its employees from the mailroom. The News did not contend that its discharging the mailers would have been lawful. Rather, The News contended that the mailers were not employees of The News. Applying the "right to control" test normally used to determine whether an individual is an employee or an independent contractor, the court agreed with the Board that The News exercised such control over the conduct of T & T and its

[17] *NLRB v. Tom Wood Dotsun*, 767 F.2d 350.
[18] *Allbritton Communications Co. v. NLRB*, 766 F.2d 812.

employees that T & T was not an independent contractor but was a servant of The News and its employees were subservants, thereby rendering The News the statutory employer of the mailers.[19] In so finding the court noted that The News paid the costs of initially establishing T & T; provided the delivery trucks and paid all operating expenses; provided the office space; determined the size of the work force, work schedules, and routes; made a weekly payment to T & T that covered salaries and operating expenses; guaranteed a set profit for T & T's owners; and approved any collective agreement between T & T and the Mailers Union.

H. Bargaining Obligation

Section 9(b)(3) of the Act provides that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." It was early established, however, that this is a limitation on the Board—that is, an employer may lawfully recognize a mixed guard union as the representative of the employer's guard employees. In *Wells Fargo*,[20] the employer had recognized a Teamsters local as the representative of its guard employees in 1948. In 1979, when the current collective-bargaining agreement was about to expire, Wells Fargo and the Teamsters engaged in extensive bargaining, twice extending the contract to facilitate negotiations. Wells Fargo, however, was unable to obtain certain economic and security-related concessions which it considered necessary. After rejecting Wells Fargo's final offer, the Teamsters struck. Two months later, while the strike was still in progress, Wells Fargo wrote the Teamsters that it was revoking the voluntary recognition. The Teamsters filed an unfair labor practice charge alleging that Wells Fargo's withdrawal of recognition under those circumstances was a breach of its duty to bargain. The Board dismissed the complaint, finding that the congressional purpose in enacting Section 9(b)(3) was so overarching as to privilege Wells Fargo's withdrawal of recognition even if its motivation was merely economic. The court agreed.

In *Detroit Edison*,[21] the Supreme Court held that a union's statutory interest in obtaining relevant information in order to represent the bargaining unit is subject to the privacy interest of employees it represents. In that case the Court held that the privacy interest precluded access to the individual employee's aptitude test scores. The Ninth Circuit was called on to apply *Detroit Edison* to a case in which two employees were caught sleeping

[19] See *Kelley v. Southern Pacific Co.*, 419 U.S. 318 (1974).
[20] *Teamsters Local 807 (Wells Fargo) v. NLRB*, 755 F.2d 5.
[21] *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

on the job.[22] The employer discharged one of the employees but suspended the other. The union filed a grievance over the discharge and sought the personnel file of the suspended employee, seeking to determine if there was disparate treatment. The inquiry ultimately focused on three categories of information: performance reviews, discipline records, and any record that the employer might rely on in the grievance proceeding. The employer responded that the information could be released only with the consent of the suspended employee. Applying *Detroit Edison*—and upholding the Board's order requiring production of these records—the court first noted that the information sought did not bear on the "basic competence" of the suspended employee in the same sense as the aptitude scores in *Detroit Edison*. The information sought here may demonstrate the employee's level of success at his job, but it does not attempt to provide an objective measure of his "intelligence" or psychological fitness. The court next noted that there was no evidence that the employer had given assurance to the employees that their personnel records would be kept confidential. In this connection, the court noted that arbitrators regularly consider such evidence and that the employer itself routinely provided the union with personnel files of grieving employees without their permission. The Seventh Circuit reached the same result in similar circumstances in a case in which both employees were discharged for fighting.[23] The union representing one of the employees but not the other requested documents reflecting the second employee's work record. The employer refused to disclose the information without the second employee's permission. In enforcing the Board's order requiring disclosure, the court recognized that personnel files could very well contain sensitive information that would not be subject to disclosure. The court held, however, that the employer had the burden of demonstrating a legitimate claim to confidentiality and that the employer had not carried that burden.

[22] *Salt River Valley Water Users' Assn. v. NLRB*, 769 F.2d 639.
[23] *NLRB v. Pfizer, Inc.*, 763 F.2d 887.

VII

Injunction Litigation

A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding while the case is pending before the Board. In fiscal year 1985 the Board filed a total of 24 petitions for temporary relief under the discretionary provisions of Section 10(j): 20 against employers and 4 against labor organizations. Of this number, together with petitions pending in court at the beginning of this report period, injunctions were granted by the courts in 11 cases and denied in 2 cases. Of the remaining cases, seven were settled prior to court action, four were withdrawn based on changed circumstances, and five were pending further processing by the court.

Injunctions were obtained against employers in seven cases and against labor organizations in four cases. The cases against employers involved a variety of alleged violations, including interference with nascent union organizational activity, conduct designed to undermine an incumbent union's representational status, and bad-faith bargaining. The cases against unions ranged from serious picket line misconduct to strikes or picketing to coerce an employer in the selection of its representatives for collective bargaining or the adjustment of grievances.

During the past year several of the district court injunctions involved unusual fact patterns and therefore warrant special discussion.

In *Norton v. New Hope Industries*,[1] an unorganized group of employees engaged in a protected strike to protest the employer's failure to timely pay their wages. The employer retaliated by discharging all the strikers. After the Region issued an 8(a)(1) complaint against the employer based on the discharges, the employer closed the plant and threatened to evade its potential backpay liability. On these facts the court concluded that there was reasonable cause to believe that the discharge of the strikers was unlawful, that there would be an NLRB backpay remedy,

[1] 119 LRRM 3086 (M.D.La.).

and that there was a reasonable probability that, absent appropriate 10(j) relief, the employer would dissipate its assets, thus precluding a backpay remedy for the discharged strikers. The court therefore enjoined the employer from dissipating or otherwise dispersing its assets unless a specified sum of money was set aside and retained for the benefit of the alleged discriminatees, required the employer to provide certain financial information to the Region, and ordered the employer to reinstate the strikers if it resumed operations.[2]

In *NLRB v. Ona Corp.*,[3] an employer had been found by the Board and a circuit court of appeals in an earlier proceeding to have engaged in unlawful interference with a union's organizational activities. After the issuance of the court of appeals' decision, the union resumed its organizational campaign, chiefly through the activities of a single employee organizer. This employee distributed at the plant T-shirts bearing the union's emblem, as well as other union paraphernalia. The employees' interest in the union was renewed as they requested and displayed union hats, buttons, and T-shirts, and commenced signing union authorization cards. The employer then discharged the chief union organizer when he refused to remove his supply of the T-shirts from the plant. After the discharge, interest in the union quickly waned, as evidenced by a drastic fall-off of employees displaying union insignia. Based on these facts, the court concluded that there was reasonable cause to believe that the discharge of the union's chief activist was unlawful, and that, absent the "affirmative signal" of ordering his interim reinstatement to the plant, the legitimate revival of the union's campaign would be "virtually impossible."[4]

The propriety of a district court's ordering the interim reinstatement of alleged discriminatees was also addressed in *Eisenberg v. Tubari, Ltd.*[5] In this case, the employer had a bargaining relationship with an incumbent union. When a rival union sought to organize the employees, the employer allegedly responded with a campaign of serious misconduct, including the discharge of the chief employee activist for the rival union, designed to discourage support for the rival union and to entrench the incumbent union. The rival union's employee supporters struck in protest against the discharge and were themselves discharged for breaching the incumbent union's contractual no-strike clause. An arbitrator upheld the discharge of both the rival union's leader and his supporters. The district court found reasonable cause to

[2] For a similar case involving a 10(j) sequestration of assets injunction, or protective order, see *Maram v. Alle Arecibo Corp.*, 110 LRRM 2495 (D.P.R. 1982), discussed in 47 NLRB Ann. Rep. 223 (1982).

[3] 605 F.Supp 874 (N.D.Ala.).

[4] 605 F.Supp. at 886. For a similar case in which the particular circumstances justified a 10(j) injunction requiring the reinstatement of a single discriminatee, see *Zipp v. Shenanigans*, 106 LRRM 2989 (C.D. Ill 1980).

[5] Docket Civil No. 85-1857 (D.N.J.), appeal pending, Docket No. 85-5456 (3d Cir.).

believe that the arbitral award was repugnant under the Act, that the discharge of the rival union leader was unlawfully motivated, that the strike by his supporters was to protest that "serious" unfair labor practice and was protected despite the contractual no-strike clause,[6] and, as a result, that the discharge of the strikers was also unlawful. The court granted interim reinstatement of all the alleged discriminatees reasoning that the exclusion of the rival union's supporters from the unit pending Board litigation would irreparably undermine that union's employee support.[7] In addition to the reinstatement order, the court granted a broad, detailed cease-and-desist order, as well as an affirmative order to post in the plant copies of the court's order in both Spanish and English.[8]

Finally, an employer's unlawful withdrawal of recognition from an incumbent union through the guise of creating an alter ego business was addressed in *Zipp v. Trout Express*.[9] The employer was a sole proprietorship operating a freight transportation business under a current labor agreement covering all its employees. The employer closed its operations and discharged all its employees, advising them that it was permanently going out of business. However, shortly thereafter, the employer reopened the business as a corporation and commenced operations as a freight transportation company on a nonunion basis with a new employee complement. The court found reasonable cause to believe that the new corporation was the alter ego of the sole proprietorship, that the discharge of the old unit employees was discriminatory, and that the employer had engaged in a de facto unlawful withdrawal of recognition from the incumbent union. The court therefore concluded that 10(j) relief was just and proper to prevent irreparable injury to the parties' bargaining relationship. Accordingly, it ordered the employer to offer interim reinstatement to all the discharged employees, and to restore recognition to the union and bargain with it for a new contract to replace the recently expired agreement.[10]

B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with violation of Section 8(b)(4)(A),

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[6] The court relied on *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956), and *Arlan's Department Store*, 133 NLRB 802 (1961).

[7] The court relied on *Kaynard v. Palby Lingerie*, 625 F.2d 1047 (2d Cir. 1980).

[8] The employer's motion for a stay of the reinstatement order pending appeal to the Third Circuit was denied.

[9] Docket Civil No. 85 C 20152 (N.D.Ill.).

[10] For similar alter ego type 10(j) cases, see, e.g., *Nelson v. Nabco Corp.*, 112 LRRM 2888 (D.Ore. 1982); *Balicer v. Melrose Bindery*, 82 LRRM 2891 (D.N.J. 1972), discussed in 38 NLRB Ann. Rep. 166 (1973).

(B), and (C),[11] or Section 8(b)(7),[12] and against an employer or union charged with a violation of Section 8(e),[13] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act. In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 49 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with 13 cases pending at the beginning of the period, 27 cases were settled, 1 was dismissed, 1 was withdrawn, and 8 were pending court action at the close of the report year. During this period, 25 petitions went to final order, the courts granting injunctions in 23 cases and denying them in 2 cases. Injunctions were issued in 16 cases involving secondary boycott action proscribed by Section 8(b)(4)(B), as well as in instances involving a violation of Section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by Section 8(e). Injunctions were granted in 2 cases involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were also issued in 5 cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

Of the 2 in which injunctions were denied, both involved secondary picketing activity by labor organizations.

In an 8(b)(4)(D) case, *Nelson v. Ladies Garment Workers Local 51 (Port Townsend Paper)*,[14] the Ninth Circuit enforced a district

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[11] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act, 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature when an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, Sec. 8(e).

[12] Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

[13] Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

[14] Docket No. 84-4158 (9th Cir.).

court's grant of 10(l) relief in an unpublished decision. The union had filed grievances against an employer seeking payments "in lieu of" disputed work which its members had not been assigned. Although the employer arguably had contracted with the union to provide the union with the disputed work, the employer had no control over the work assignment on this particular jobsite. When the union persisted in seeking "in lieu of" payments following an adverse 10(k) award of the work to another employer's employees, the Board sought and was granted 10(l) injunctive relief. Although no work stoppages or other work disruptions had occurred, the district court found reasonable cause to believe that the union's pre- and post-10(k) grievances violated Section 8(b)(4)(ii)(D) by placing coercive economic pressure on both employers with an object of forcing the second employer to reassign the disputed work from its employees to the pressured employer's union-represented employees, in derogation of the Board's 10(k) award.[15]

In *Hotel & Restaurant Employees Local 2*,[16] a union was engaged in an economic strike against a restaurant located at the end of a pier along which several neutral employers conducted business. The restaurant maintained a large sign at the public entrance to the pier, and ran a shuttle service for customers and employees from the pier entrance to the restaurant. In support of its dispute with the restaurant, the union picketed at the restaurant, as well as at the entrance to the pier, 400 feet away from the restaurant, and at various locations along the pier. The Board sought relief under Section 10(l) to enjoin the picketing at places remote from the employer's premises. The district court denied the Board's request, emphasizing that the union had taken steps to minimize the effects of its picketing on the other employers located along the pier and that the evidence did not show that the picketing had actually had a substantial impact on the other, neutral employers. Shortly before the district court's opinion issued, the strike was resolved and the parties requested withdrawal of the underlying unfair labor practice complaint.[17]

In *Sharp v. Food & Commercial Workers Local P-9*,[18] a district court enjoined a union from engaging in picketing and handbilling against several banks in Minnesota and Iowa that had provided financing for an employer with whom the union was engaged in an economic dispute.

The court agreed that there was at least reasonable cause to believe that the picketing and the handbilling, which was alleged to be an inextricable part of the picketing, violated the secondary boycott provisions of Section 8(b)(4)(ii)(B) of the Act. The court

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[15] Civil No. C 84-1103C (W.D.Wash.).

[16] 605 F.Supp. 573 (N.D.Cal.).

[17] Because the request for 10(l) relief was thereby rendered moot, the Board did not have the opportunity to appeal the district court's decision.

[18] Civ. No. 3-85-1510 (D.Minn.), appeal pending (8th Cir.).

rejected the union's contention that the second (publicity) proviso to Section 8(b)(4)(B)[19] privileged the union's activity, reasoning that picketing is a form of conduct not protected by the proviso and, in any event, the banks were not "distributors" of products "produced" by the employer within the meaning of the proviso.

[19] In essence, this proviso excludes from the prohibition of Sec. 8(b)(4) of the Act publicity, other than picketing, truthfully advising the public that products produced by an employer with whom the union has a primary dispute are being distributed by another employer, so long as the publicity does not induce a work stoppage by individuals employed by persons other than the primary employer.

VIII

Contempt Litigation

In fiscal 1985, 135 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with outstanding court decrees, as compared to 146 cases in fiscal 1984 and 115 cases in fiscal 1983. Voluntary compliance was achieved in 31 cases during the fiscal year without the necessity of filing a contempt petition, although in 57 others it was determined that contempt was not warranted. During the same period, 31 civil contempt proceedings were instituted, as compared to 25 in fiscal 1984. These include five motions for the assessment of fines and four motions for writs of body attachment.[1] There were 17 contempt or equivalent adjudi-

[1] *NLRB v. Leland House*, in No. 83-5746 (6th Cir.) (civil contempt for refusing to execute agreement and provide payroll records necessary to compute backpay); *NLRB v. Harris-Teeter Supermarkets*, in Nos. 79-1612, 79-1792 (D.C. Cir.) (civil contempt for threatening employees that if they did not disavow the union, the company would move to another city; disparate treatment between union and antiunion activity; unlawfully participating in a card-signing campaign to oust the union, and threatening to discontinue hiring minorities because they "favor the union"); *NLRB v. A & A Ornamental Iron*, in No. 83-7136 (9th Cir.) (civil contempt for failure to pay backpay); *NLRB v. Standard Steel Treating Co.*, in No. 83-5538 (6th Cir.) (civil contempt for refusing to bargain, rescind unilateral changes, recall laid-off employees, provide records, and post notices); *NLRB v. Iron Workers Local 433*, in No. 83-7252 (9th Cir.) (refusing to request company to hire discriminatee and indicate that it has no objection to his reemployment); *NLRB v. Unimedia Corp.*, in Nos. 78-2400, 83-7409 (9th Cir.) (civil contempt for failure to reinstate discriminatees to make them and other employees whole for losses, to post notices, and to reimburse Board for court costs); *NLRB v. Grand Flooring Co.*, in No. 84-5475 (6th Cir.) (civil contempt for failure to make records available to compute backpay); *NLRB v. Singer & Davis*, in No. 84-3153 (3d Cir.) (civil contempt for refusal to make records available and post notices); *NLRB v. Astro Janitorial Services*, in No. 83-2133 (4th Cir.) (civil contempt for refusal to bargain on union's request); *NLRB v. Hill's Painting Co.*, in No. 83-2326 (8th Cir.) (civil contempt for failure to pay backpay and notify discriminatees in writing of expunged references to layoffs); *NLRB v. Service Employees Local 77*, in No. 83-7193 (civil contempt for secondary picketing); *NLRB v. Greater Kansas City Roofing*, in No. 84-1415 (10th Cir.) (civil contempt for failure to check off and remit dues and fees, make payments to benefit plans, make records available and post notices); *NLRB v. Steinerfilm, Inc.*, in No. 81-1437 (1st Cir.) (civil contempt for violating broad order to cease and desist from 8(a)(1) conduct); *NLRB v. National Glass Co.*, in No. 83-3213 (3d Cir.) (civil contempt for refusal to bargain in good faith); *NLRB v. Cuyahoga Carpet Installation Co.*, in No. 84-5122 (6th Cir.) (civil contempt for failure to make back payments to fringe benefit funds, to continue to make such payments, and to post notices); *NLRB v. Tasman Sea*, in No. 80-7126 (9th Cir.) (civil contempt for refusal to bargain and carry out the terms of the collective-bargaining agreement, including failure to make contributions to benefit plans, in derogation of the court judgment); *NLRB v. Iron Workers Local 45*, in Nos. 82-3524, 83-7252, 85-3379 (3d Cir.) (civil contempt for failure to comply with three Board orders and a consent contempt decree for discriminating in hiring hall); *NLRB v. Plumbers Local 195*, in No. 83-4087 (5th Cir.) (civil contempt for picket line misconduct); *NLRB v. Mine Workers Local 2496*, in No. 85-5307 (6th Cir.) (civil contempt for picket line violence); *NLRB v. Mine Workers District 17 (Rocky Hollow)*, in Nos. 80-1680, 84-2307, 85-1003 (4th Cir.) (civil contempt for mass picketing, blocking of ingress and egress, and causing and threatening physical harm and property damage); *NLRB v. Mine Workers (L & J Equipment Co.)*, in No. 84-3497 (3d Cir.) (civil contempt for blocking

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cations awarded in favor of the Board, including 2 where compliance fines were assessed and 2 in which writs of body attachment issued.[2] In addition, one proposed adjudication is pending before the court of appeals on the special master's recommendation.[3] Two cases were consummated by settlement orders requiring compliance.[4] There were 11 motions for protective orders

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ingress and egress, throwing objects, threats of bodily harm); *NLRB v. Mobile Home Estates*, in No. 82-1240 (6th Cir.) (civil contempt for effecting unilateral changes, soliciting employee grievances, and disparate enforcement of plant rules); *NLRB v. Teamsters Local 85*, in Nos. 71-1293, 25,983 (9th Cir.) (to assess fines for civil contempt for engaging in unlawful secondary activity); *NLRB v. Mine Workers District 17 (Elk Run)*, in Nos. 80-1680, 82-1998 (4th Cir.) (to assess fines and impose increased prospective fines for civil contempt for picket line misconduct); *NLRB v. Teamsters Local 70*, in No. 82-7451 (9th Cir.) (to assess fines for civil contempt for engaging in unlawful secondary activity); *NLRB v. Delta Metal Crafters*, in Nos. 76-1432, 81-1410 (3d Cir.) (to assess fines and increase prospective fines for civil contempt for failure to pay backpay); *NLRB v. Philadelphia Building Trades Council*, in No. 83-3456 (3d Cir.) (to assess fines and increase prospective fines for unlawful secondary activity and mass picketing); *NLRB v. J & W Drywall Contractors*, in No. 81-1110 (6th Cir.) (body attachment for failure to make payments to fringe benefit funds); *NLRB v. Transportation by Lamar*, in No. 82-1144 (7th Cir.) (body attachment for failure to pay backpay); *NLRB v. Dawson Masonry*, in No. 81-7407 (11th Cir.) (body attachment for failure to pay backpay); *NLRB v. M & B Contracting*, in No. 80-1077 (6th Cir.) (body attachment for failure to pay backpay).

[2] *NLRB v. Carpenters Local 112*, in Nos. 75-2064, 75-2166, 75-2770 (9th Cir.) (consent contempt adjudication for unlawful picketing and exertion of pressure to assign work to the union, imposing prospective fines of $750 plus $100/day); *NLRB v. M & B Contracting*, in No. 80-1077 (6th Cir.) (consent order adjudging respondent in civil contempt for failure to comply with 8(a)(1) and (3) provisions of judgment, imposing prospective fine of up to $7500 for each subsequent violation); *NLRB v. Steinerfilm, Inc.*, in No. 81-1437 (1st Cir.) (consent contempt adjudication for violating broad cease-and-desist order against 8(a)(1) conduct, imposing prospective fines of $8000 plus $2500 per day); *NLRB v. KTCR*, in No. 75-1108 (8th Cir.) (order adopting special master's findings of contempt for failure to recognize and bargain with the union and failure to cease and desist from 8(a)(1) activity, imposing prospective fines of $10,000 plus $5000 per day); *NLRB v. A & A Ornamental Iron*, in No. 83-7136 (9th Cir.) (contempt adjudication by default for failure to pay backpay, imposing prospective fines of $10,000 plus $1000 per day); *NLRB v. Trinity-Roseland*, in No. 83-1985 (7th Cir.) (civil contempt adjudication for failure to offer reinstatement, notify employees of expunged references to discharges, make records available, and post notices, imposing prospective fine of $100 per day); *NLRB v. Hampton Hill*, in No. 83-2326 (8th Cir.) (civil contempt adjudication for failure to pay backpay and notify discriminatees about expunged references to layoffs, imposing $1000 per day prospective fine); *NLRB v. Iron Workers Local 433*, in No. 83-7252 (9th Cir.) (order vacating dismissal of contempt petition and ordering compliance); *NLRB v. Astro Janitorial Service*, in No. 83-2133 (4th Cir.) (order adjudging respondent in civil contempt by default for refusal to bargain on union's request); *NLRB v. Leland House*, in No. 83-5746 (6th Cir.) (civil contempt adjudication for refusing to execute agreement and failure to provide payroll records necessary to compute backpay, imposing prospective fines of $1000 per violation and $500 per day); *NLRB v. Gamco Industries*, in No. 81-7180 (9th Cir.) (civil contempt adjudication for refusing to bargain, imposing prospective fine of $10,000); *NLRB v. Unimedia Corp.*, in Nos. 78-2400, 83-7409 (9th Cir.) (civil contempt adjudication for failure to reinstate discriminatees and make them whole, imposing prospective fines of $5000 per violation and $500 per day); *NLRB v. Maietta Contracting*, in Nos. 81-1179, 83-3215, 85-3117 (3d Cir.) (civil contempt adjudication for failure to pay backpay imposing prospective fines of $5000 plus $500 per day); *NLRB v. Service Employees Local 32B-32J*, in No. 82-4006 (2d Cir.) (consent civil contempt adjudication for engaging in unlawful secondary activity, directing assessment of $33,000 fine and prospective fine of up to $10,000 per strike, $1000 per day, and $1000 per incident of secondary activity); *NLRB v. Hospital Employees District 1199*, in Nos. 81-4031, 84-8083 (2d Cir.) (civil consent contempt adjudication for violating 8(b)(1)(A) provisions of judgment, assessing $100,000 fine and imposing increased prospective fines of $30,000 for the first violation and $5000 for each additional violation plus other fines); *NLRB v. Transportation by LaMar*, in No. 82-1144 (7th Cir.) (body attachment for failure to pay backpay); *NLRB v. Dawson Monsry*, in No. 81-7407 (11th Cir.) (body attachment for failure to pay backpay).

[3] *NLRB v. Southwire Co.*, in No. 84-8380 (11th Cir.) (special master's report recommending imposition of prospective fines of $10,000 per violation and $1000 per day for civil contempt for violating 8(a)(1) provisions of judgment).

[4] *NLRB v. ACF Industries*, in Nos. 77-1713, 78-1386 (8th Cir.); *NLRB v. Everspray Enterprises*, in No. 81-1893 (7th Cir.).

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filed[5] and 7 discovery motions were filed.[6] Seven protective orders were entered,[7] and one was denied.[8] There were 10 discovery motions granted,[9] and 1 denied.[10] Four cases were discontinued on full compliance.[11] During the fiscal year, $83,000 in fines were collected, and the Board recouped in excess of $65,000 in costs and attorneys' fees incurred in contempt litigation.

A number of the proceedings during the fiscal year were noteworthy, several of which involved ancillary proceedings, including orders restraining the disposition of respondents' assets in order to assure satisfaction of their backpay liabilities. Thus, in *Delano Hotel*,[12] the respondent entered into negotiations to sell its hotel property without making provision for satisfying its backpay liability under an enforced Board order out of the proceeds of the sale. Upon the Board's application, the Fifth Circuit enjoined the proposed sale and all other dispositions of the respondent's assets until it posted security in the amount of its estimated backpay liability. The order also subjected the respondent to prospective compensatory and coercive fines and issuance of writs of attachment against its responsible officers in the event of violations of the restraining order.

Similarly, faced with the employer's announced intention to close its plant and sell its assets at public auction, the Board in *Diplomat Envelope*,[13] upon emergency motion, obtained a protective restraining order from the Second Circuit requiring the employer to establish an escrow account in favor of the Board to

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[5] *NLRB v. Delano Hotel*, in No. 83-5095 (11th Cir.); *NLRB v. G. Zaffino & Sons*, in Nos. 81-4204, 81-4206 (2d Cir.); *NLRB v. Standard Steel Treating Co.*, in No. 83-5538 (6th Cir.); *NLRB v. Grand Flooring & Plastering Co.*, in No. 84-5475 (6th Cir.); *NLRB v. Great Southern Construction*, in No. 83-1912 (10th Cir.); *NLRB v. Maietta Contracting*, in Nos. 81-1179, 83-3215 (3d Cir.); *NLRB v. Service Employees Local 77*, in No. 83-7195 (9th Cir.) (emergency motion for interlocutory injunction pending disposition of civil contempt proceedings); *NLRB v. Geriatric Center of St. Louis*, in No. 81-1632 (8th Cir.); *NLRB v. Sumco Mfg. Co.*, in No. 80-1686 (6th Cir.); *NLRB v. Diplomat Envelope Corp.*, in No. 84-4058 (2d Cir.); *NLRB v. Laborers Local 262*, in No. 85-1308 (8th Cir.).

[6] *NLRB v. G. Zaffino & Sons*, in Nos. 81-4204, 81-4206 (2d Cir.); *NLRB v. Limestone Apparel Corp.*, in No. 81-1693 (6th Cir.); *NLRB v. Sumco Mfg. Co.*, in No. 80-1686 (6th Cir.); *NLRB v. Transportation by Lamar*, in No. 82-1144 (7th Cir.); *NLRB v. Hassell, Inc.*, in No. 84-7456 (11th Cir.); *NLRB v. Fabi Fashions*, in No. 84-4125 (2d Cir.) (postjudgment discovery motion); *NLRB v. Benchmark Industries*, in No. 82-4452 (11th Cir.).

[7] *NLRB v. Delano Hotel*, in No. 83-5095 (11th Cir.); *NLRB v. G. Zaffino & Sons*, in Nos. 81-4204, 81-4206 (2d Cir.) (two orders entered); *NLRB v. Grand Flooring & Plastering Co.*, in No. 84-5475 (6th Cir.); *NLRB v. Diplomat Envelope Corp.*, in No. 84-4098 (2d Cir.); *NLRB v. Geriatric Center*, in No. 81-1632 (8th Cir.); *NLRB v. Sumco Mfg. Co.*, in No. 80-1686 (6th Cir.).

[8] *NLRB v. Service Employees Local 77*, in No. 83-7193 (9th Cir.).

[9] *NLRB v. G & G Supermarket*, in 83-5631 (6th Cir.); *NLRB v. Fullerton Transfer & Storage*, in No. 76-2478 (6th Cir.); *NLRB v. DaVinci Fashions*, in No. 83-7472 (9th Cir.); *NLRB v. G. Zaffino & Sons*, in Nos. 81-4204, 81-4206 (2d Cir.); *NLRB v. Limestone Apparel Corp.*, in No. 81-1693 (6th Cir.) (two discovery orders entered); *NLRB v. Sumco Mfg. Co.*, in No. 80-1686 (6th Cir.); *NLRB v. Hassell, Inc.*, in No. 84-7456 (11th Cir.); *NLRB v. Transportation by LaMar*, in No. 82-1144 (7th Cir.); *NLRB v. Fabi Fashions*, in No. 84-4125 (2d Cir.).

[10] *NLRB v. Transportation by Lamar*, in No. 82-1144 (7th Cir.).

[11] *NLRB v. Overseas Motors*, in No. 82-1645 (6th Cir.); *NLRB v. Singer & Davis*, in Nos. 84-3153, 85-3060 (3d Cir.); *NLRB v. Spear Meat*, in No. 83-7605 (9th Cir.); *NLRB v. Grand Flooring Co.*, in No. 84-5475 (6th Cir.).

[12] *NLRB v. Delano Hotel*, No. 83-5095 (11th Cir.).

[13] *NLRB v. Diplomat Envelope Corp.*, No. 84-4098 (2d Cir.).

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assure future payment of backpay claims estimated at $173,000. Pursuant to the court's order, proceeds from the auction sale were set aside until the company's monetary liability could be liquidated by the Board in supplemental backpay proceedings.

Likewise in *KTCR*,[14] the Eighth Circuit, upon application by the Board, issued a protective restraining order requiring the proceeds of the anticipated sale of a radio station be escrowed to satisfy any future backpay liability growing out of pending contempt proceedings brought against the station and its owner for 8(a)(1), (3), and (5) conduct in violation of a prior judgment against the employer. After a hearing before a special master, the court adjudged the company and its president in contempt, and directed payment of backpay; imposed prospective compliance fines; and awarded the Board its costs and attorneys' fees.

Persistent failure by the respondents to satisfy make-whole obligations continued to constitute much of the work of the Contempt Litigation Branch during the fiscal year. In some of these cases, resort to body attachment was required in order to coerce compliance. Thus, in *Dawson Masonry*,[15] the Eleventh Circuit issued a writ of body attachment against the company's president because of the company's failure to comply with the monetary purgation provisions of a prior contempt adjudication. As a result, the judgment was satisfied in full.

In a novel case in the Eighth Circuit involving a respondent's failure to satisfy a backpay judgment, the court in *Clayton Construction Corp.*,[16] upon application of the unfair labor practice discriminatee, adjudged the respondent in contempt for failing to pay backpay owing him under an enforced supplemental order of the Board. However, because of the long-settled principle established in *Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261 (1940), that the Board has exclusive authority to institute proceedings for violation of the court's decree, the court, upon the Board's application, subsequently vacated the contempt adjudication. Thereafter, the Board undertook discovery to determine whether the respondent's claimed inability to satisfy the judgment was bona fide.

In *Trinity-Roseland Corp.*,[17] the respondent sought to excuse its failure to comply with a reinstatement order entered on default, claiming that because it lacked funds with which to hire counsel at the administrative and enforcement stages of the proceedings and, therefore, had not previously contested the merits, it should be entitled to attack the validity of the judgment at the contempt stage. The Seventh Circuit, adopting the report of its special master, held that the respondent was precluded by Sec-

[14] *NLRB v. KTCR*, No. 75-1108 (8th Cir.).
[15] *NLRB v. Dawson Masonry*, No. 81-7407 (11th Cir.).
[16] *NLRB v. Clayton Construction Corp.*, No. 80-1865 (8th Cir.).
[17] *NLRB v. Trinity-Roseland Corp.*, No. 83-1985 (7th Cir.).

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tion 10(e) of the Act from seeking to litigate the merits of the underlying case. Accordingly, the court adjudged it in contempt.

One of the more extensive pieces of pending litigation settled during the fiscal year was *District 1199*,[18] a civil contempt proceeding brought against the union and five of its top officials for extensive 8(b)(1)(A) conduct growing out of the 1984 strike by the hospital workers against New York City area hospitals. The Board's petition alleged 75 separate violations at 12 different hospital locations, involving assaults by striking employees on nonstrikers, hospital supervisors, security guards, and police officers; blocking of hospital ingress and egress; and other violent coercive conduct. The court-approved settlement provides for the payment of $100,000 in compliance fines; reimbursement of $45,000 in Board attorneys' fees and costs, and increased prospective noncompliance fines of $15,000 for each violative incident, including $30,000 for the first such incident during each future labor dispute, as well as an additional fine of $15,000 should the incident result in serious bodily injury, and individual fines against noncomplying union officers and agents.

Many of the Board's Regional Offices have encountered difficulties in monitoring compliance with court-enforced Board orders because of a lack of cooperation by respondents in providing adequate information regarding their compliance. To rectify this situation, the General Counsel directed that Regional Offices routinely request inclusion of visitatorial clauses in all the Board's remedial orders. *General Counsel's Memorandum 85-5 on Visitorial Clauses*, 120 LRR 137 (1985). The proposed visitatorial clause would authorize the Board to obtain discovery from the respondent, its officers, agents, successors, or assigns, or any other person having knowledge concerning compliance in the manner provided by the Federal Rules of Civil Procedure. Such discovery, concerning any matter "reasonably related to compliance" with the Board's order, would be conducted under the supervision of the appellate court that enforced the Board's order. In this regard, the First Circuit in the *Steinerfilm* case,[19] observed that "the Board, like other agencies, can provide for 'visitorial' (information gathering) authority in its decrees," because "all agencies are free to insert visitorial clauses in decrees" (702 F.2d at 15, 17).

[18] *NLRB v. Hospital Employees District 1199*, Nos. 81-4031, 84-8083 (2d Cir.).

[19] *NLRB v. Steinerfilm, Inc.*, 702 F.2d 14 (1983), discussed in the 1983 Annual Report, 48 NLRB Ann. Rep. 140 (1983).

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IX

Special and Miscellaneous Litigation

A. Litigation Involving the Board's Jurisdiction

The petitioners in *Iowa Nurses Assn. v. NLRB*[1] sought review of several Board decisions denying summary judgment on unfair labor practice complaints charging various employers with refusing to recognize and bargain with Board-certified representatives. In each case the Board remanded the underlying representation proceeding to the Regional Director for reconsideration of the bargaining unit determination. The Court of Appeals for the District of Columbia Circuit held that the decisions to remand were not final orders reviewable under Section 10(f) of the Act. The court also concluded that there existed no alternative basis for exercising jurisdiction under 28 U.S.C. § 1651 inasmuch as the Board "has authority to order the sequence and mode of proceedings in matters within its jurisdiction and no unreasonable or inordinate delay is indicated here." Accordingly, the court granted the Board's motion to dismiss the appeal.

In another[2] an employer sought to enjoin the application of a Board certification of a collective-bargaining representative for employees of a Seventh Day Adventist nursing home. The district court dismissed the complaint relying on the settled rule that Board representation determinations made in election proceedings under Section 9 are not subject to review in Federal district court. The court rejected the company's assertion that the Board's certification constituted a clear violation of the nursing home's right to free exercise and free expression of its religious beliefs. The court explained that the exclusive review of the company's constitutional claim lies in the court of appeals under Section 10(e) and (f) of the Act on the issuance of a final unfair labor practice decision of the Board.

B. Litigation Under the Bankruptcy Code

In *NLRB v. Superior Forwarding*,[3] the Court of Appeals for the Eighth Circuit concluded that unfair labor practice proceedings

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[1] Docket No. 84-1563 (per curiam).
[2] *River Pines Community Health Center v. NLRB*, 119 LRRM 2407 (N.D.Ill.).
[3] 762 F.2d 695.

against an employer in reorganization under Chapter 11 of the Bankruptcy Code could be enjoined by the bankruptcy court where the Board proceedings would threaten the assets of the debtor's estate. The court acknowledged that a number of courts have concluded that "litigation expenses will not constitute an injury sufficient to justify enjoining litigation." 762 F.2d at 698. However, the court ruled that the facts of this case were sufficient to distinguish that line of authority. The court relied on its finding that the Board's unfair labor practice complaint was based on allegations of unilateral change in contract terms after rejection of a contract in bankruptcy. On this predicate, the court concluded that the Board was properly enjoined because the Supreme Court in *Bildisco*[4] stated that the "Board is precluded from, in effect, enforcing the contract terms of the collective-bargaining agreement by filing unfair labor practice charges against the debtor-in-possession for violating § 8(d) of the NLRA." 762 F.2d at 699. Because the Board could not find a debtor guilty of such an unfair labor practice, the Eighth Circuit reasoned that the Board could be enjoined from considering those and related charges.

In another case, *General Highway Express v. Teamsters Local 20, et al.*,[5] a bankruptcy court refused to enjoin a Board unfair labor practice proceeding against the debtor, finding that such proceeding was no threat to the assets of the debtor's estate. Relying on *Nathanson v. NLRB*, 344 U.S. 25 (1952), the court observed that bankruptcy courts should defer to the Board the responsibility to liquidate any claim based on unfair labor practice conduct. It further noted that the only "threat" to the debtor's assets which had been cited in support of the request for injunction was the expense of litigating the unfair labor practice case before the Board. Thereupon, the court followed the settled principle that litigation expense, even if substantial and unrecoupable, does not constitute irreparable injury. Finally, the bankruptcy court stayed its consideration of the debtor's objection to the Board's proof of claim in order to permit the Board to determine the amount, if any, of the Board's claim for remedying the debtor's alleged unfair labor practice conduct.

C. Litigation Under the Equal Access to Justice Act

In *Continental Web Press v. NLRB*,[6] the court of appeals held that the petitioner was eligible for an award under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A) (EAJA). The precise issue in this case was whether the company's net worth was greater than $5 million; if so the company would not be eligible for an award of fees. For purposes of determining net

[4] *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).
[5] 118 LRRM 3402 (Bankr. N.D.Ohio).
[6] 767 F.2d 321 (7th Cir.).

worth, a term not defined in the statute, the court held that the company's assets may be depreciated by any generally accepted accounting principle. The court rejected the Board's reliance on the statement in the legislative history of EAJA that "[i]n determining the value of assets, the cost of acquisition rather than fair market value should be used."[7] Concerning the amount of the attorney fee award, the court agreed with the Board that the hourly fee rate applied should not include any increase for unsubstantiated assertions of special factors. Finally, the court rejected the company's application for fees relating to the fee application itself, concluding that the Board was substantially justified in resisting the application and raising the net worth issue. The court also noted that the Board had prevailed in its opposition to the extent of convincing the court to reduce the amount requested.

D. Litigation Under the Freedom of Information Act

In *United Technologies Corp. v. NLRB*,[8] the Board responded to a company's FOIA request by disclosing in an edited form two memoranda describing circumstances in which the Board had received confidential records of the company. The company filed suit to obtain disclosure of the remaining portions of the Board memoranda. The district court concluded that the documents are work product, normally privileged in civil discovery, and protected from disclosure in this case by FOIA exemption 5. The district court further concluded exemption 7(D) protected the names of the employee witnesses who had provided the information or made statements to the Board's investigators, "including the [names of] employees allegedly involved in the theft of [the company's] documents, as an assurance of confidentiality could reasonably be inferred from the circumstances in which they gave the information to the Board." 118 LRRM at 3289. Having found that the withheld portions of the documents were protected from compelled disclosure on these grounds, the court found it unnecessary to consider the further bases for nondisclosure relied on by the Board.

In *American Commercial Barge Lines Co. v. NLRB*,[9] the Sixth Circuit denied the company's application for an award of attorney fees under 5 U.S.C. § 552(a)(4)(E). The court of appeals found that the Board's position in the underlying FOIA litigation, although not successful, nonetheless had a reasonable basis in law, and that the lower court had erroneously relied on the Board's voluntary disclosure of the requested records to provide an inference that the initial withholding was wrongful. The court of appeals explained that "[p]enalizing an agency for disclosure

[7] H.R. Rep. No. 96-1418 at 15 (1980).
[8] 118 LRRM 3284 (D.Conn.).
[9] 758 F.2d 1109.

at any stage of the proceedings is simply not in the spirit of the FOIA." 758 F.2d at 1112. Citing several other circuit decisions,[10] the court concluded that the Board had a reasonable basis in law for asserting that closed case witness statements are exempt from compelled disclosure under exemption 7 of FOIA.

The subject of the FOIA dispute in *Van Bourg, Allen, Weinberg & Roger v. NLRB*[11] was six witness statements and an internal Board memorandum in a closed unfair labor practice case. The district court ruled that three witness statements were not exempt from disclosure, but that the other statements and the internal Board memorandum were exempt. Both the plaintiff and the Board appealed. Initially, the court of appeals noted that the plaintiff did not contest the district court's finding that the memorandum was properly withheld under exemption 5 as an intra-agency predicisional communication. The court of appeals rejected the Board's argument that all the affidavits "submitted to the NLRB by private parties in the course of an unfair labor practices investigation" were Agency documents protected under exemption 5. 751 F.2d at 985. Three of the six affidavits (but not the same three) were found protected under exemption 7(C). Disclosure of one, the court observed, would create a substantial risk of embarrassment for, and reprisals against, its author and others mentioned in the affidavit. Two other affidavits found exempt were noted to "describe in painful detail the personalities, activities, biases and proclivities of employers, union members and officials." Ibid. The court determined that none of the remaining three affidavits raised concerns about privacy. It specifically observed that two "discuss[ed] legitimate union and management activities without any of the intimate or personal details which raised privacy concerns" in the first three witness statements. 751 F.2d at 986. The court rejected the Board's contention that the affidavits were exempt under exemption 7(D), stating that for such protection "there must be a finding [not made by the district court here] that the source of the affidavit was explicitly or implicitly guaranteed confidentiality." Ibid.

[10] *New England Medical Center Hospital v. NLRB*, 548 F.2d 377 (1st Cir. 1976); *Polynesian Cultural Center v. NLRB*, 600 F.2d 1327 (9th Cir. 1979).

[11] 751 F.2d 982 (9th Cir.).

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other Cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amount of backpay due discriminatees under a prior Board or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amount held by the regional director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

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Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the regional director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representative is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the results of the election. The challenges in such a case are never resolved, and the certification is based on the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the regional director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Case" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

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Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b)(1)(A) or (2) or 8(a)(1) and (2) or (3), where, for instance such moneys were collected pursuant to an illegal hiring hall arrangement, or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the cases of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions, are, further, those in which the decision-making authority of the Board (the regional director in representation cases), as provided in sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge by the administrative law judge, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the regional director.

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Election, Directed

Board-Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director-Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the regional director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under section 10(j) or section 10(e) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the U.S. court of appeals under section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Cases." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purpose of hearing.

Representation Cases

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are intitated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representative if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or combination of other types of C cases. It does not include representation cases.

Types of Cases

General: Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of section 8.

CA: A charge that an employer has committed unfair labor practices in violation of section 8(a)(1), (2), (3), (4), or (5), or any combination thereof.

CB: A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(1), (2), (3), (5), or (6), or any combination thereof.

CC: A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(4)(i) and/or (A), (B), or (C), or any combination thereof.

CD: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(4)(i) or (ii)(D). Preliminary actions under section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).

CG: A charge that a labor organization has committed unfair labor practices in violation of section 8(g).

CP: A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(7)(A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) of the act.

RC: A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for determination of a collective-bargaining representative.

RD: A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

RM: A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

Other Cases

AC: (Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO: (Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC: (Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classification of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization case): A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union Deauthorization Cases

See "Other Cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal or the charge of the petition and such request is approved.

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Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of the Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1985[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending October 1, 1984	*20,437	8,036	2,274	542	1,095	6,614	1,876
Received fiscal 1985	41,175	13,113	4,458	868	1,870	17,148	3,718
On docket fiscal 1985	61,612	21,149	6,732	1,410	2,965	23,762	5,594
Closed fiscal 1985	42,328	13,654	4,677	860	1,855	17,611	3,671
Pending September 30, 1985	19,284	7,495	2,055	550	1,110	6,151	1,923
Unfair labor practice cases[2]							
Pending October 1, 1984	*17,655	6,820	1,825	458	*72	6,093	1,587
Received fiscal 1985	32,685	9,775	2,665	685	1,350	15,244	2,966
On docket fiscal 1985	50,340	16,595	4,490	1,143	2,222	21,337	4,553
Closed fiscal 1985	33,946	10,376	2,955	672	1,321	15,725	2,947
Pending September 30, 1985	16,394	6,269	1,535	471	901	5,612	1,606
Representation cases[3]							
Pending October 1, 1984	*2,571	1,182	441	82	204	460	202
Received fiscal 1985	7,884	3,226	1,762	175	478	1,657	586
On docket fiscal 1985	10,455	4,408	2,203	257	682	2,117	788
Closed fiscal 1985	7,807	3,218	1,693	180	488	1,655	573
Pending September 30, 1985	2,648	1,190	510	77	194	462	215
Union-shop deauthorization cases							
Pending October 1, 1984	*60	—	—	—	—	60	—
Received fiscal 1985	245	—	—	—	—	245	—
On docket fiscal 1985	305	—	—	—	—	305	—
Closed fiscal 1985	228	—	—	—	—	228	—
Pending September 30, 1985	77	—	—	—	—	77	—
Amendment of certification cases							
Pending October 1, 1984	*7	3	0	0	4	0	0
Received fiscal 1985	29	15	3	3	6	0	2
On docket fiscal 1985	36	18	3	3	10	0	2
Closed fiscal 1985	24	13	2	2	5	0	2
Pending September 30, 1985	12	5	1	1	5	0	0
Unit clarification cases							
Pending October 1, 1984	*144	31	8	2	15	1	87
Received fiscal 1985	332	97	28	5	36	2	164
On docket fiscal 1985	476	128	36	7	51	3	251
Closed fiscal 1985	323	97	27	6	41	3	149
Pending September 30, 1985	153	31	9	1	10	0	102

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1A for totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Revised, reflects lower figures than reported pending Sept. 30, 1984, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

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Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1985[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
CA cases							
Pending October 1, 1984	*13,791	6,764	1,813	451	822	3,936	5
Received fiscal 1985	22,545	9,709	2,645	654	1,274	8,248	15
On docket fiscal 1985	36,336	16,473	4,458	1,105	2,096	12,184	20
Closed fiscal 1985	23,726	10,259	2,940	644	1,254	8,613	16
Pending September 30, 1985	12,610	6,214	1,518	461	842	3,571	4
CB cases							
Pending October 1, 1984	*2,886	36	11	7	29	2,146	657
Received fiscal 1985	8,382	50	13	5	39	6,989	1,286
On docket fiscal 1985	11,268	86	24	12	68	9,135	1,943
Closed fiscal 1985	8,444	49	10	3	42	7,101	1,239
Pending September 30, 1985	2,824	37	14	9	26	2,034	704
CC cases							
Pending October 1, 1984	*619	10	1	0	10	5	593
Received fiscal 1985	1,115	6	3	21	22	5	1,058
On docket fiscal 1985	1,734	16	4	21	32	10	1,651
Closed fiscal 1985	1,090	7	3	20	15	8	1,037
Pending September 30, 1985	644	9	1	1	17	2	614
CD cases							
Pending October 1, 1984	*132	9	0	0	3	0	120
Received fiscal 1985	280	10	4	3	8	1	254
On docket fiscal 1985	412	19	4	3	11	1	374
Closed fiscal 1985	288	11	2	3	5	1	266
Pending September 30, 1985	124	8	2	0	6	0	108
CE cases							
Pending October 1, 1984	*59	0	0	0	7	2	50
Received fiscal 1985	47	0	0	0	5	1	41
On docket fiscal 1985	106	0	0	0	12	3	91
Closed fiscal 1985	51	0	0	0	2	0	49
Pending September 30, 1985	55	0	0	0	10	3	42
CG cases							
Pending October 1, 1984	*16	0	0	0	1	0	15
Received fiscal 1985	28	0	0	0	0	0	28
On docket fiscal 1985	44	0	0	0	1	0	43
Closed fiscal 1985	38	0	0	0	1	0	37
Pending September 30, 1985	6	0	0	0	0	0	6
CP cases							
Pending October 1, 1984	*152	1	0	0	0	4	147
Received fiscal 1985	288	0	0	2	2	0	284
On docket fiscal 1985	440	1	0	2	2	4	431
Closed fiscal 1985	309	0	0	2	2	2	303
Pending September 30, 1985	131	1	0	0	0	2	128

[1] See Glossary of terms for definitions.

* Revised, reflects lower figures than reported pending Sept. 30, 1984, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

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Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1985[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
RC cases							
Pending October 1, 1984	*1,907	1,180	441	82	201	3	—
Received fiscal 1985	5,623	3,218	1,760	173	468	4	—
On docket fiscal 1985	7,530	4,398	2,201	255	669	7	—
Closed fiscal 1985	5,566	3,211	1,691	178	483	3	—
Pending September 30, 1985	1,964	1,187	510	77	186	4	—
RM cases							
Pending October 1, 1984	*202	—	—	—	—	—	202
Received fiscal 1985	586	—	—	—	—	—	586
On docket fiscal 1985	788	—	—	—	—	—	788
Closed fiscal 1985	573	—	—	—	—	—	573
Pending September 30, 1985	215	—	—	—	—	—	215
RD cases							
Pending October 1, 1984	*462	2	0	0	3	457	—
Received fiscal 1985	1,675	8	2	2	10	1,653	—
On docket fiscal 1985	2,137	10	2	2	13	2,110	—
Closed fiscal 1985	1,668	7	2	2	5	1,652	—
Pending September 30, 1985	469	3	0	0	8	458	—

[1] See Glossary of terms for definitions.

* Revised, reflects lower figures than reported pending Sept. 30, 1984, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

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Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1985

	Number of cases showing specific allegations	Percent of total cases
A. Charges filed against employers under sec. 8(a)		
Subsections of Sec. 8(a):		
Total cases	22,545	100.0
8(a)(1)	3,469	15.4
8(a)(1)(2)	236	1.0
8(a)(1)(3)	8,602	38.2
8(a)(1)(4)	177	0.8
8(a)(1)(5)	6,700	29.7
8(a)(1)(2)(3)	210	0.9
8(a)(1)(2)(4)	5	0.0
8(a)(1)(2)(5)	117	0.5
8(a)(1)(3)(4)	626	2.8
8(a)(1)(3)(5)	2,153	9.5
8(a)(1)(4)(5)	16	0.1
8(a)(1)(2)(3)(4)	34	0.2
8(a)(1)(2)(3)(5)	111	0.5
8(a)(1)(2)(4)(5)	1	0.0
8(a)(1)(3)(4)(5)	77	0.3
8(a)(1)(2)(3)(4)(5)	11	0.0
Recapitulation[1]		
8(a)(1)[2]	22,545	100.0
8(a)(2)	725	3.2
8(a)(3)	11,824	52.4
8(a)(4)	947	4.2
8(a)(5)	9,186	40.7
B. Charges filed against unions under sec. 8(b)		
Subsections of Sec. 8(b):		
Total cases	10,065	100.0
8(b)(1)	6,183	61.4
8(b)(2)	92	0.9
8(b)(3)	396	3.9
8(b)(4)	1,395	13.9
8(b)(5)	10	0.1
8(b)(6)	11	0.1
8(b)(7)	288	2.9
8(b)(1)(2)	1,231	12.2
8(b)(1)(3)	345	3.4
8(b)(1)(5)	6	0.1
8(b)(1)(6)	7	0.1
8(b)(2)(3)	10	0.1
8(b)(2)(5)	2	0.0
8(b)(3)(6)	3	0.0
8(b)(1)(2)(3)	69	0.7
8(b)(1)(2)(5)	7	0.1
8(b)(1)(2)(6)	6	0.1
8(b)(1)(3)(6)	1	0.0
8(b)(1)(2)(3)(5)	1	0.0
8(b)(1)(2)(5)(6)	2	0.0
Recapitulation[1]		
8(b)(1)	7,858	78.1
8(b)(2)	1,420	14.1
8(b)(3)	825	8.2
8(b)(4)	1,395	13.9
8(b)(5)	28	0.3
8(b)(6)	30	0.3
8(b)(7)	288	2.9

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Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1985—Continued

	Number of cases showing specific allegations	Percent of total cases
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	1,395	100.0
8(b)(4)(A)	118	8.5
8(b)(4)(B)	927	66.5
8(b)(4)(C)	8	0.6
8(b)(4)(D)	280	20.1
8(b)(4)(A)(B)	58	4.2
8(b)(4)(B)(C)	3	0.2
8(b)(4)(A)(B)(C)	1	0.1
Recapitulation[1]		
8(b)(4)(A)	177	12.7
8(b)(4)(B)	989	70.9
8(b)(4)(C)	12	0.9
8(b)(4)(D)	280	20.1
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	288	100.0
8(b)(7)(A)	58	20.1
8(b)(7)(B)	19	6.6
8(b)(7)(C)	205	71.2
8(b)(7)(A)(C)	5	1.7
8(b)(7)(B)(C)	1	0.3
Recapitulation[1]		
8(b)(7)(A)	63	21.9
8(b)(7)(B)	20	6.9
8(b)(7)(C)	211	73.3
C. Charges filed under sec. 8(e)		
Total cases 8(e)	47	100.0
Against unions alone	47	100.0
D. Charges filed under sec. 8(g)		
Total cases 8(g)	28	100.0

[1] A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

[2] Sec. 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1985[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case												
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearings issued	78	75	—	—	—	75	—	—	—	—	—	—	—
Complaints issued	4,339	3,638	2,840	517	135	—	6	4	1	42	17	32	44
Backpay specifications issued	86	68	55	12	0	—	0	0	0	0	0	1	0
Hearings completed, total	1,087	773	606	120	13	25	5	1	1	1	0	1	0
Initial ULP hearings	1,018	728	565	117	12	25	5	1	1	1	0	1	0
Backpay hearings	54	38	34	3	1	—	0	0	0	0	0	0	0
Other hearings	15	7	7	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	1,103	880	699	148	12	—	5	2	1	4	4	2	3
Initial ULP decisions	1,024	824	650	141	12	—	5	2	1	4	4	2	3
Backpay decisions	49	33	30	3	0	—	0	0	0	0	0	0	0
Supplemental decisions	30	23	19	4	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,634	1,232	955	190	40	34	2	1	1	8	0	0	1
Upon consent of parties:													
Initial decisions	135	96	46	30	20	—	0	0	0	0	0	0	0
Supplemental decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	355	287	232	47	6	—	1	0	0	1	0	0	0
Backpay decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	1,070	786	635	98	12	34	0	1	0	6	0	0	0
Decisions based on stipulated record	27	21	14	2	1	—	1	0	1	1	0	0	1
Supplemental ULP decisions	9	6	4	1	1	—	0	0	0	0	0	0	0
Backpay decisions	38	36	24	12	0	—	0	0	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1985[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	1,563	1,516	1,213	94	209	4
Initial hearings	1,312	1,265	987	90	188	4
Hearings on objections and/or challenges	251	251	226	4	21	0
Decisions issued, total	1,332	1,258	994	85	179	25
By Regional Directors	1,228	1,178	927	80	171	25
Elections directed	1,075	1,031	822	62	147	25
Dismissals on record	153	147	105	18	24	0
By Board	104	80	67	5	8	0
Transferred by Regional Directors for initial decision	30	20	18	0	2	0
Elections directed	16	11	10	0	1	0
Dismissals on record	14	9	8	0	1	0
Review of Regional Directors' decisions:						
Requests for review received	652	630	564	22	44	0
Withdrawn before request ruled upon	2	2	1	0	1	0
Board action on request ruled upon, total	386	356	310	8	38	20
Granted	57	53	48	0	5	0
Denied	327	301	260	8	33	20
Remanded	2	2	2	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	74	60	49	5	6	0
Regional Directors' decisions:						
Affirmed	34	30	25	2	3	0
Modified	24	17	15	1	1	0
Reversed	16	13	9	2	2	0
Outcome:						
Election directed	49	36	30	2	4	0
Dismissals on record	25	24	19	3	2	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1985[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Decisions on objections and/or challenges, total	971	901	812	24	74	18
By Regional Directors	266	241	213	6	22	8
By Board	705	669	599	18	52	10
In stipulated elections	651	618	554	17	47	10
No exceptions to Regional Directors' reports	400	388	363	6	19	7
Exceptions to Regional Directors' reports	251	230	191	11	28	3
In directed elections (after transfer by Regional Director)	50	47	41	1	5	0
Review of Regional Directors' supplemental decisions:						
Request for review received	289	284	269	4	11	0
Withdrawn before request ruled upon	1	1	1	0	0	0
Board action on request ruled upon, total	309	271	259	2	10	0
Granted	41	40	39	0	1	0
Denied	263	229	218	2	9	0
Remanded	5	2	2	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	4	4	4	0	0	0
Regional Directors' decisions:						
Affirmed	1	1	1	0	0	0
Modified	1	1	1	0	0	0
Reversed	2	2	2	0	0	0

[1] See Glossary of terms for definitions.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1985[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	112	6	99
Decisions issued after hearing	120	7	107
By Regional Directors	115	7	103
By Board	5	0	4
Transferred by Regional Directors for initial decision	4	0	3
Review of Regional Directors' decisions:			
Requests for review received	12	2	8
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	11	2	6
Granted	3	2	1
Denied	7	0	4
Remanded	1	0	1
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	1	0	1
Regional Directors' decisions:			
Affirmed	1	0	1
Modified	0	0	0
Reversed	0	0	0

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1985[1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2]10,820	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	2,159	1,694	1,126	69	2	307	190	465	371	17	2	52	23
Recognition or other assistance withdrawn	44	44	28	6	0	6	4	—	—	—	—	—	—
Employer-dominated union disestablished	15	15	9	1	2	2	1	—	—	—	—	—	—
Employees offered reinstatement	3,006	3,006	2,329	61	3	324	289	—	—	—	—	—	—
Employees placed on preferential hiring list	1,031	1,031	774	25	2	114	116	—	—	—	—	—	—
Hiring hall rights restored	325	—	—	—	—	—	—	325	260	12	1	37	15
Objections to employment withdrawn	315	—	—	—	—	—	—	315	251	12	1	37	14
Picketing ended	229	—	—	—	—	—	—	229	204	12	1	11	1
Work stoppage ended	88	—	—	—	—	—	—	88	72	5	0	10	1
Collective bargaining begun	2,258	2,015	1,798	42	0	97	78	243	225	0	0	13	5
Backpay distributed	3,070	2,652	2,131	60	9	265	187	418	325	14	1	59	19
Reimbursement of fees, dues, and fines	1,532	1,141	848	23	3	143	124	391	318	12	2	46	13
Other conditions of employment improved	3,979	3,240	3,120	26	6	54	34	739	725	5	0	7	2
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:													
Employees offered reinstatement, total	10,905	10,905	9,079	172	1	354	1,299	—	—	—	—	—	—
Accepted	9,956	9,956	8,605	117	1	241	992	—	—	—	—	—	—
Declined	949	949	474	55	0	113	307	—	—	—	—	—	—
Employees placed on preferential hiring list	708	708	572	108	2	1	25	0	0	0	0	0	0
Hiring hall rights restored	51	—	—	—	—	—	—	51	29	0	0	2	20

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Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1985[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Objections to employment withdrawn	23	—	—	—	—	—	—	23	15	0	0	7	1
Employees receiving backpay:													
From either employer or union	18,434	18,280	14,962	855	8	1,525	930	154	80	5	0	29	40
From both employer and union	206	202	140	0	0	37	25	4	3	0	0	1	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	5,035	785	361	0	0	190	234	4,250	4,242	0	1	7	0
From both employer and union	4	4	4	0	0	0	0	0	0	0	0	0	0
C. By amounts of monetary recovery, total	$39,858,351	$38,598,988	$20,430,403	$1,111,412	$123,305	$3,494,126	$13,439,742	$1,259,363	$859,346	$34,838	$64	$168,978	$196,137
Backpay (includes all monetary payments except fees, dues, and fines)	39,120,266	38,181,795	20,072,677	1,111,412	123,305	3,481,591	13,392,810	938,471	552,349	34,838	0	155,147	196,137
Reimbursement of fees, dues, and fines	738,085	417,193	357,726	0	0	12,535	46,932	320,892	306,997	0	64	13,831	0

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1985 after the company and/or union had satisfied all remedial action requirements.

[2] A single case usually results in more than one remedial action; therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1985[1]

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Food and kindred products	1,439	1,123	833	273	13	1	0	0	3	291	209	14	68	8	0	17
Tobacco manufacturers	15	15	10	5	0	0	0	0	0	0	0	0	0	0	0	0
Textile mill products	269	202	161	40	1	0	0	0	0	65	44	2	19	2	0	0
Apparel and other finished products made from fabric and similar materials	284	227	181	45	0	0	0	0	1	53	41	2	10	2	0	2
Lumber and wood products (except furniture)	436	302	243	57	1	0	0	0	1	126	92	7	27	2	0	6
Furniture and fixtures	387	292	238	51	2	1	0	0	0	93	73	5	15	2	0	0
Paper and allied products	520	423	306	114	3	0	0	0	0	91	68	3	20	2	0	4
Printing, publishing, and allied products	825	627	489	130	3	5	0	0	0	180	129	10	41	1	3	14
Chemicals and allied products	577	452	332	105	13	0	2	0	0	116	88	3	25	1	0	8
Petroleum refining and related industries	203	175	138	24	8	2	0	0	3	23	16	0	7	0	2	3
Rubber and miscellaneous plastic products	499	361	269	88	3	0	0	0	1	134	106	0	28	4	0	0
Leather and leather products	102	81	63	18	0	0	0	0	0	18	14	2	2	2	0	1
Stone, clay, glass, and concrete products	803	664	489	144	19	7	2	0	3	129	77	11	41	6	0	4
Primary metal industries	1,004	851	570	270	5	4	2	0	0	147	101	9	37	5	1	0
Fabricated metal products (except machinery and transportation equipment)	1,409	1,112	816	270	18	5	0	0	3	276	201	16	59	10	3	8
Machinery (except electrical)	1,467	1,176	813	295	44	21	0	0	3	278	196	16	66	6	0	7
Electrical and electronic machinery, equipment, and supplies	749	606	425	178	2	1	0	0	0	134	104	6	24	7	0	2
Aircraft and parts	334	308	173	135	0	0	0	0	0	23	18	1	4	2	0	1
Ship and boat building and repairing	216	195	107	84	3	1	0	0	0	19	15	0	4	1	0	1
Automotive and other transportation equipment	859	709	455	246	4	2	0	0	2	142	109	5	28	3	1	4
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	278	227	176	47	2	1	0	0	1	48	39	2	7	0	0	3
Miscellaneous manufacturing industries	1,721	1,296	803	439	32	10	3	0	9	400	315	21	64	9	1	15
Manufacturing	14,396	11,424	8,090	3,058	176	61	9	0	30	2,786	2,055	135	596	75	11	100

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Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Metal mining	89	74	53	20	0	0	0	0	1	14	5	5	1	1	0	0
Coal mining	634	594	378	145	42	5	0	0	24	38	25	7	6	1	0	1
Oil and gas extraction	80	69	49	17	2	1	0	0	0	8	4	0	4	3	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	65	51	27	8	12	3	0	0	1	12	8	1	3	2	0	0
Mining	868	788	507	190	56	9	0	0	26	72	45	13	14	7	0	1
Construction	4,392	3,908	1,998	1,120	523	140	19	0	108	449	243	111	95	13	2	20
Wholesale trade	2,421	1,712	1,310	354	28	12	2	0	6	656	463	70	123	17	0	36
Retail trade	4,232	3,107	2,280	645	103	6	6	0	67	1,040	624	120	296	52	1	32
Finance, insurance, and real estate	447	311	225	59	19	4	0	0	4	127	102	6	19	2	0	7
U.S. Postal Service	1,509	1,507	1,105	402	0	0	0	0	0	1	1	0	0	0	0	1
Local and suburban transit and interurban highway passenger transportation	439	341	244	96	1	0	0	0	0	94	74	6	14	0	0	4
Motor freight transportation and warehousing	2,463	1,944	1,494	369	53	10	2	0	16	492	336	33	123	16	0	11
Water transportation	333	300	151	123	18	5	1	0	2	30	24	0	6	0	0	3
Other transportation	255	189	127	51	6	5	0	0	0	64	50	4	10	0	0	2
Communication	932	759	446	301	6	5	0	0	1	153	112	3	38	15	1	4
Electric, gas, and sanitary services	628	483	350	108	18	4	0	0	3	131	101	9	21	0	3	11
Transportation, communication, and other utilities	5,050	4,016	2,812	1,048	102	29	3	0	22	964	697	55	212	31	4	35
Hotels, rooming houses, camps, and other lodging places	1,060	895	542	324	20	4	0	0	5	151	109	9	33	11	0	3
Personal services	315	211	172	35	2	0	2	0	0	101	66	7	28	2	0	1
Automotive repair, services, and garages	365	221	178	38	2	2	0	0	1	134	98	4	32	1	0	9
Motion pictures	240	214	122	83	5	2	0	0	2	22	17	1	4	2	0	2
Amusement and recreation services (except motion pictures)	277	184	118	50	5	0	4	0	7	90	56	10	24	3	0	0
Health services	2,437	1,780	1,484	254	12	0	0	28	2	578	468	19	91	17	5	57
Educational services	211	158	131	24	3	0	0	0	0	48	42	0	6	0	2	3
Membership organizations	446	394	159	220	9	2	2	0	2	43	34	3	6	0	0	9
Business services	1,612	1,178	842	289	37	5	0	0	5	416	349	12	55	9	2	7
Miscellaneous repair services	186	145	92	51	1	1	0	0	0	39	25	1	13	1	0	1
Legal services	113	103	75	28	0	0	0	0	0	9	9	0	0	0	0	1
Museums, art galleries, and botanical and zoological gardens	6	4	2	1	1	0	0	0	0	2	1	0	1	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Social services	186	116	104	12	0	0	0	0	0	65	53	2	10	0	1	4
Miscellaneous services	55	38	22	12	4	0	0	0	0	17	12	2	3	0	0	0
Services	7,509	5,641	4,043	1,421	101	16	8	28	24	1,715	1,339	70	306	46	10	97
Public administration	351	271	175	85	7	3	0	0	1	74	54	6	14	2	1	3
Total, all industrial groups	41,175	32,685	22,545	8,382	1,115	280	47	28	288	7,884	5,623	586	1,675	245	29	332

[1] See Glossary of terms for definitions.
[2] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

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Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1985[1]

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	148	107	79	26	1	1	0	0	0	35	20	5	10	3	0	3
New Hampshire	77	62	51	11	0	0	0	0	0	12	9	0	3	1	0	2
Vermont	59	44	38	5	0	0	0	1	0	13	9	0	4	1	0	1
Massachusetts	1,196	843	622	158	39	18	3	0	3	331	277	9	45	0	4	18
Rhode Island	124	100	72	21	4	3	0	0	0	24	23	0	1	0	0	0
Connecticut	768	649	488	149	2	3	0	7	0	111	89	6	16	3	1	4
New England	2,372	1,805	1,350	370	46	25	3	8	3	526	427	20	79	8	5	28
New York	3,921	3,172	1,922	1,125	75	15	8	1	26	708	581	34	93	6	1	34
New Jersey	1,469	1,102	751	257	59	26	1	2	6	349	289	14	46	7	1	10
Pennsylvania	2,632	2,124	1,504	519	58	19	1	1	22	470	338	22	110	12	3	23
Middle Atlantic	8,022	6,398	4,177	1,901	192	60	10	4	54	1,527	1,208	70	249	25	5	67
Ohio	2,508	1,999	1,388	483	88	19	2	0	19	475	339	23	113	20	2	12
Indiana	1,581	1,321	966	314	17	19	0	1	4	239	173	11	55	15	0	6
Illinois	2,470	1,976	1,267	498	116	52	3	0	40	457	313	32	112	23	1	13
Michigan	2,263	1,715	1,304	352	35	9	0	2	13	494	385	19	90	32	2	20
Wisconsin	811	642	458	149	31	2	0	1	1	158	104	13	41	7	0	4
East North Central	9,633	7,653	5,383	1,796	287	101	5	4	77	1,823	1,314	98	411	97	5	55
Iowa	375	277	218	38	18	1	2	0	0	94	65	8	21	0	0	4
Minnesota	582	378	287	50	28	3	0	1	6	193	106	14	73	4	0	7
Missouri	1,156	911	615	221	51	16	0	0	8	226	164	10	52	11	0	8
North Dakota	33	21	18	2	1	0	0	0	0	12	6	1	5	0	0	0
South Dakota	18	10	9	1	0	0	0	0	0	8	5	1	2	0	0	0
Nebraska	104	83	70	11	1	0	0	0	1	19	19	0	0	1	0	1
Kansas	254	200	124	71	3	1	0	0	1	53	35	3	15	1	0	0
West North Central	2,522	1,880	1,341	397	102	21	2	1	16	605	400	37	168	17	0	20
Delaware	54	46	35	11	0	0	0	0	0	6	4	0	2	2	0	0
Maryland	800	667	455	204	4	2	2	0	0	130	108	3	19	0	1	2

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Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
District of Columbia	216	169	121	47	0	0	0	1	0	45	40	2	3	0	0	2
Virginia	488	397	305	85	6	0	0	0	1	87	65	6	16	1	0	3
West Virginia	617	572	363	138	47	3	2	0	19	41	27	5	9	3	0	1
North Carolina	349	294	234	60	0	0	0	0	0	55	44	0	11	0	0	0
South Carolina	174	143	113	30	0	0	0	0	0	31	27	1	3	0	0	0
Georgia	712	616	465	141	1	3	0	0	6	93	78	1	14	0	1	2
Florida	866	714	553	138	10	5	0	0	2	151	115	5	31	0	0	1
South Atlantic	4,276	3,618	2,644	854	74	13	4	1	28	639	508	23	108	6	2	11
Kentucky	743	613	483	104	13	4	0	0	9	114	83	5	26	7	0	9
Tennessee	666	542	404	132	6	0	0	0	0	119	85	6	28	0	0	5
Alabama	397	313	221	85	4	0	0	0	3	83	70	3	10	0	0	1
Mississippi	183	139	104	34	1	0	0	0	0	43	28	1	14	0	1	0
East South Central	1,989	1,607	1,212	355	24	4	0	0	12	359	266	15	78	7	1	15
Arkansas	223	174	148	26	0	0	0	0	0	46	34	1	11	0	0	3
Louisiana	383	320	223	91	3	2	1	0	0	60	47	1	12	0	3	0
Oklahoma	291	236	180	52	4	0	0	0	0	50	33	6	11	2	2	1
Texas	1,241	1,068	817	239	8	2	0	0	2	168	110	17	41	0	1	4
West South Central	2,138	1,798	1,368	408	15	4	1	0	2	324	224	25	75	2	6	8
Montana	186	112	94	15	1	0	0	0	2	65	34	8	23	8	0	1
Idaho	116	85	57	21	0	6	1	0	0	29	21	2	6	0	0	2
Wyoming	51	33	28	4	1	0	0	0	0	18	11	3	4	0	0	0
Colorado	600	519	385	126	7	0	1	0	0	78	52	5	21	0	1	2
New Mexico	123	108	74	33	1	0	0	0	0	15	11	1	3	0	0	0
Arizona	400	352	246	97	8	0	0	0	1	48	27	10	11	0	0	0
Utah	119	91	68	20	2	0	1	0	0	28	24	0	4	0	0	0
Nevada	458	394	213	164	10	3	2	0	2	63	28	11	24	0	0	1
Mountain	2,053	1,694	1,165	480	30	9	5	0	5	344	208	40	96	8	1	6

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Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Washington	1,105	794	506	243	33	2	0	0	10	273	119	33	121	17	0	21
Oregon	458	306	243	56	2	3	1	0	1	142	83	18	41	2	0	8
California	5,695	4,435	2,706	1,324	274	38	15	2	76	1,121	703	194	224	50	4	85
Alaska	302	250	150	71	25	0	0	0	4	49	34	9	6	2	0	1
Hawaii	201	161	80	71	9	0	1	0	0	35	30	1	4	3	0	2
Guam	5	3	1	2	0	0	0	0	0	2	2	0	0	0	0	0
Pacific	7,766	5,949	3,686	1,767	343	43	17	2	91	1,622	971	255	396	74	4	117
Puerto Rico	383	264	202	52	2	0	0	8	0	113	96	3	14	1	0	5
Virgin Islands	21	19	17	2	0	0	0	0	0	2	1	0	1	0	0	0
Outlying areas	404	283	219	54	2	0	0	8	0	115	97	3	15	1	0	5
Total, all States and areas	41,175	32,685	22,545	8,382	1,115	280	47	28	288	7,884	5,623	586	1,675	245	29	332

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

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Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1985[1]

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Connecticut	768	649	488	149	2	3	0	7	0	111	89	6	16	3	1	4
Maine	[illegible]	[illegible]	79	26	1	1	0	0	0	35	20	5	10	3	0	3
Massachusetts	1,196	843	622	158	39	18	3	0	3	331	277	9	45	0	4	18
New Hampshire	77	62	51	11	0	0	0	0	0	12	9	0	3	1	0	2
Rhode Island	124	100	72	21	4	3	0	0	0	24	23	0	1	0	0	0
Vermont	59	44	38	5	0	0	0	1	0	13	9	0	4	1	0	1
Region I	2,372	1,705	1,350	370	46	25	3	8	3	526	427	20	79	8	5	28
Delaware	54	46	35	11	0	0	0	0	0	6	4	0	2	2	0	0
New Jersey	1,469	1,102	751	257	59	26	1	2	6	249	289	14	46	7	1	10
New York	3,921	3,172	1,922	1,125	75	15	8	1	26	708	581	34	93	6	1	34
Puerto Rico	383	264	202	52	2	0	0	8	0	113	96	3	14	1	0	5
Virgin Islands	21	19	17	2	0	0	0	0	0	2	1	0	1	0	0	0
Region II	5,848	4,603	2,927	1,447	136	41	9	11	32	1,178	971	51	156	16	2	49
District of Columbia	216	169	121	47	0	0	0	1	0	45	40	2	3	0	0	2
Maryland	800	667	455	204	4	2	2	0	0	130	108	3	19	0	1	2
Pennsylvania	2,652	2,124	1,504	519	58	19	1	1	22	470	338	22	110	12	3	23
Virginia	488	397	305	85	6	0	0	0	1	87	65	6	16	1	0	3
West Virginia	617	572	363	138	47	3	2	0	19	41	27	5	9	3	0	1
Region III	4,753	3,929	2,748	993	115	24	5	2	42	773	578	38	157	16	4	31
Alabama	397	313	221	85	4	0	0	0	3	83	70	3	10	0	0	1
Florida	866	714	553	138	16	5	0	0	2	151	115	5	31	0	0	1
Georgia	712	616	465	141	1	3	0	0	6	93	78	1	14	0	1	2
Kentucky	743	613	483	104	13	4	0	0	9	114	83	5	26	7	0	9
Mississippi	183	139	104	34	1	0	0	0	0	43	28	1	14	0	1	0
North Carolina	349	294	234	60	0	0	0	0	0	55	44	0	11	0	0	0

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Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
South Carolina	174	143	113	30	0	0	0	0	0	31	27	1	3	0	0	0
Tennessee	666	542	404	132	6	0	0	0	0	119	85	6	28	0	0	5
Region IV	4,090	3,374	2,577	724	41	12	0	0	20	689	530	22	137	7	2	18
Illinois	2,470	1,976	1,267	498	116	52	3	0	40	457	313	32	112	23	1	13
Indiana	1,581	1,321	966	314	17	19	0	1	4	239	173	11	55	15	0	6
Michigan	2,263	1,715	1,304	352	35	9	0	2	13	494	385	19	90	32	2	20
Minnesota	582	378	287	53	28	3	0	1	6	193	106	14	73	4	0	7
Ohio	2,508	1,999	1,388	483	88	19	2	0	19	475	339	23	113	20	2	12
Wisconsin	811	642	458	149	31	2	0	1	1	158	104	13	41	7	0	4
Region V	10,215	8,031	5,670	1,849	315	104	5	5	83	2,016	1,420	112	484	101	5	62
Arkansas	223	174	148	26	0	0	0	0	0	46	34	1	11	0	0	3
Louisiana	383	320	223	91	3	2	1	0	0	60	47	1	12	0	3	0
New Mexico	123	108	74	33	1	0	0	0	0	15	11	1	3	0	0	0
Oklahoma	291	236	180	52	4	0	0	0	0	50	33	6	11	2	2	1
Texas	1,241	1,068	817	239	8	2	0	0	2	168	110	17	41	0	1	4
Region VI	2,261	1,906	1,442	441	16	4	1	0	2	339	235	26	78	2	6	8
Iowa	375	277	218	38	18	1	2	0	0	94	65	8	21	0	0	4
Kansas	254	200	124	71	3	1	0	0	1	53	35	3	15	1	0	0
Missouri	1,156	911	615	221	51	16	0	0	8	226	166	10	52	11	0	8
Nebraska	104	83	70	11	1	0	0	0	1	19	19	0	0	1	0	1
Region VII	1,889	1,471	1,027	341	73	18	2	0	10	392	283	21	88	13	0	13
Colorado	600	519	385	126	7	0	1	0	0	78	52	5	21	0	1	2
Montana	186	112	94	15	1	0	0	0	2	65	34	8	23	8	0	1
North Dakota	33	21	18	2	1	0	0	0	0	12	6	1	5	0	0	0
South Dakota	18	10	9	1	0	0	0	0	0	8	5	1	2	0	0	0
Utah	119	91	68	20	2	0	1	0	0	28	24	0	4	0	0	0
Wyoming	51	33	28	4	1	0	0	0	0	18	11	3	4	0	0	0

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1985[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Region VIII	1,007	786	602	168	12	0	2	0	2	209	132	18	59	8	1	3
Arizona	400	352	246	97	8	0	0	0	1	48	27	10	11	0	0	0
California	5,695	4,435	2,706	1,324	274	38	15	2	76	1,121	703	194	224	50	4	85
Hawaii	201	161	80	71	9	0	1	0	0	35	30	1	4	3	0	2
Guam	5	3	1	2	0	0	0	0	0	2	2	0	0	0	0	0
Nevada	458	394	213	164	10	3	2	0	2	63	28	11	24	0	0	1
Region IX	6,759	5,345	3,246	1,658	301	41	18	2	79	1,269	790	216	263	53	4	88
Alaska	302	250	150	71	25	0	0	0	4	49	34	9	6	2	0	1
Idaho	116	85	57	21	0	6	1	0	0	29	21	2	6	0	0	2
Oregon	458	306	243	56	2	3	1	0	1	142	83	18	41	2	0	8
Washington	1,105	794	506	243	33	2	0	0	10	273	119	33	121	17	0	21
Region X	1,981	1,435	956	391	60	11	2	0	15	493	257	62	174	21	0	32
Total, all States and areas	41,175	32,685	22,545	8,382	1,115	280	47	28	288	7,884	5,623	566	1,675	245	29	332

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the 10 Standard Federal Administrative Regions.

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Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1985[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	33,946	100.0	—	23,726	100.0	8,444	100.0	1,090	100.0	288	100.0	51	100.0	38	100.0	309	100.0
Agreement of the parties	9,667	28.5	100.0	7,519	31.6	1,491	17.6	527	48.3	2	0.6	13	25.4	15	39.4	100	32.3
Informal settlement	9,464	27.9	97.9	7,376	31.0	1,465	17.3	506	46.4	2	0.6	13	25.4	11	28.9	91	29.4
Before issuance of complaint	6,233	18.4	64.5	4,806	20.2	966	11.4	377	34.5	*	—	10	19.6	10	26.3	64	20.7
After issuance of complaint, before opening of hearing	3,168	9.3	32.8	2,513	10.5	493	5.8	129	11.8	2	0.6	3	5.8	1	2.6	27	8.7
After hearing opened, before issuance of administrative law judge's decision	63	0.2	0.7	57	0.2	6	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement	203	0.6	2.1	143	0.6	26	0.3	21	1.9	0	0.0	0	0.0	44	10.5	9	2.9
After issuance of complaint, before opening of hearing	109	0.3	1.1	49	0.2	26	0.3	21	1.9	0	0.0	0	0.0	4	10.5	9	2.9
Stipulated decision	45	0.1	0.5	22	0.1	4	0.0	17	1.5	0	0.0	0	0.0	0	0.0	2	0.6
Consent decree	64	0.2	0.7	27	0.1	22	0.2	4	0.3	0	0.0	0	0.0	4	10.5	7	2.2
After hearing opened	94	0.3	1.0	94	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	21	0.1	0.2	21	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	73	0.2	0.8	73	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	1,037	3.1	100.0	829	3.4	149	1.7	28	2.5	13	4.5	1	1.9	1	2.6	16	5.1
Administrative law judge's decision	17	0.1	1.6	13	0.0	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	638	1.9	61.5	495	2.0	110	1.3	18	1.6	3	1.0	1	1.9	0	0.0	11	3.5
Adopting administrative law judge's decision (no exceptions filed)	234	0.7	22.6	181	0.7	39	0.4	9	0.8	1	0.3	0	0.0	0	0.0	4	1.2
Contested	404	1.2	39.0	314	1.3	71	0.8	9	0.8	2	0.6	1	1.9	0	0.0	7	2.2
Circuit court of appeals decree	377	1.1	36.4	316	1.3	35	0.4	10	0.9	10	3.4	0	0.0	1	2.6	5	1.6

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1985[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Supreme Court action	5	0.0	0.5	5	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Withdrawal	10,253	30.2	100.0	7,161	30.1	2,601	30.8	334	30.6	1	0.3	16	31.3	14	36.8	126	40.7
Before issuance of complaint	9,843	29.0	96.0	6,873	28.9	2,530	29.9	308	28.2	[2]	0.0	16	31.3	12	31.5	104	33.6
After issuance of complaint, before opening of hearing	358	1.1	3.5	247	1.0	62	0.7	25	2.2	1	0.3	0	0.0	1	2.6	22	7.1
After hearing opened, before administrative law judge's decision	47	0.1	0.5	36	0.1	9	0.1	1	0.0	0	0.0	0	0.0	1	2.6	0	0.0
After administrative law judge's decision, before Board decision	4	0.0	0.0	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	12,707	37.4	100.0	8,706	34.5	4,203	49.7	201	18.4	1	0.3	21	42.5	8	21.0	67	21.6
Before issuance of complaint	11,936	35.2	93.9	7,621	32.1	4,050	47.9	180	16.5	[2]	0.0	14	27.4	8	21.0	63	20.3
After issuance of complaint, before opening of hearing	101	0.3	0.8	84	0.4	17	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	7	0.0	0.1	6	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	6	0.0	0.0	6	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	627	1.8	4.9	474	1.9	135	1.5	11	1.0	1	0.3	2	3.9	0	0.0	4	1.2
Adopting administrative law judge's decision (no exceptions filed)	94	0.3	0.7	72	0.3	21	0.2	0	0.0	1	0.3	0	0.0	0	0.0	0	0.0
Contested	533	1.6	4.2	402	1.6	114	1.3	11	1.0	0	0.0	2	3.9	0	0.0	4	1.2
By circuit court of appeals decree	19	0.1	0.1	15	0.0	0	0.0	3	0.2	0	0.0	1	1.9	0	0.0	0	0.0
By Supreme Court action	11	0.0	0.1	0	0.0	0	0.0	7	0.6	0	0.0	4	7.8	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	271	0.8	0.0	0	0.0	0	0.0	0	0.0	271	94.0	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	11	0.0	0.0	11	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Table 8 for summary of disposition by stage. See Glossary of terms for definitions.
[2] CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A.

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Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1985[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	271	100.0
Agreement of the parties—informal settlement	103	38.0
Before 10(k) notice	65	24.0
After 10(k) notice, before opening of 10(k) hearing	37	13.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.4
Compliance with Board decision and determination of dispute	13	4.8
Withdrawal	100	36.9
Before 10(k) notice	80	29.5
After 10(k) notice, before opening of 10(k) hearing	9	3.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	11	4.1
After Board decision and determination of dispute	0	0.0
Dismissal	55	20.3
Before 10(k) notice	39	14.4
After 10(k) notice, before opening of 10(k) hearing	6	2.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	5	1.8
By Board decision and determination of dispute	5	1.8

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1985[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	33,946	100.0	23,726	100.0	8,444	100.0	1,090	100.0	288	100.0	51	100.0	38	100.0	309	100.0
Before issuance of complaint	28,283	83.3	19,300	81.3	7,546	89.4	865	79.4	271	94.1	40	78.4	30	78.9	231	74.8
After issuance of complaint, before opening of hearing	3,736	11.0	2,893	12.2	598	7.1	175	16.1	3	1.0	3	5.9	6	15.8	58	18.8
After hearing opened, before issuance of administrative law judge's decision	211	0.6	193	0.8	16	0.2	1	0.1	0	0.0	0	0.0	1	2.6	0	0.0
After administrative law judge's decision, before issuance of Board decision	27	0.1	23	0.1	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions	328	1.0	253	1.1	60	0.7	9	0.8	2	0.7	0	0.0	0	0.0	4	1.3
After Board decision, before circuit court decree	944	2.8	723	3.0	185	2.2	20	1.8	2	0.7	3	5.9	0	0.0	11	3.6
After circuit court decree, before Supreme Court action	401	1.2	336	1.4	35	0.4	13	1.2	10	3.5	1	2.0	1	2.6	5	1.6
After Supreme Court action	16	0.0	5	0.0	0	0.0	7	0.6	0	0.0	4	7.8	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

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Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1985[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	7,807	100.0	5,566	100.0	573	100.0	1,668	100.0	228	100.0
Before issuance of notice of hearing	2,443	31.3	1,331	23.9	295	51.5	817	49.0	171	75.0
After issuance of notice, before close of hearing	3,945	50.5	3,113	55.9	185	32.3	647	38.8	19	8.3
After hearing closed, before issuance of decision	75	1.0	62	1.1	5	0.9	8	0.5	1	0.4
After issuance of Regional Director's decision	1,168	15.0	922	16.6	74	12.9	172	10.3	34	14.9
After issuance of Board decision	176	2.2	138	2.5	14	2.4	24	1.4	3	1.3

[1] See Glossary of terms for definitions.

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Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1985[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	7,807	100.0	5,566	100.0	573	100.0	1,668	100.0	228	100.0
Certification issued, total	4,923	63.1	3,748	67.3	245	42.8	930	55.8	123	53.9
After:										
Consent election	134	1.7	84	1.5	12	2.1	38	2.3	7	3.1
Before notice of hearing	49	0.6	31	0.6	8	1.4	10	0.6	7	3.1
After notice of hearing, before hearing closed	83	1.1	51	0.9	4	0.7	28	1.7	0	0.0
After hearing closed, before decision	2	0.0	2	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	3,930	50.3	2,998	53.9	180	31.4	752	45.1	84	36.8
Before notice of hearing	1,239	15.9	796	14.3	87	15.2	356	21.3	74	32.5
After notice of hearing, before hearing closed	2,674	34.3	2,190	39.3	91	15.9	393	23.6	10	4.4
After hearing closed, before decision	17	0.2	12	0.2	2	0.3	3	0.2	0	0.0
Expedited election	5	0.1	1	0.0	3	0.5	1	0.1	0	0.0
Regional Director-directed election	827	10.6	647	11.6	50	8.7	130	7.8	31	13.6
Board-directed election	27	0.3	18	0.3	0	0.0	9	0.5	1	0.4
By withdrawal, total	2,158	27.6	1,461	26.2	214	37.3	483	29.0	80	35.1
Before notice of hearing	884	11.3	449	8.1	137	23.9	298	17.9	71	31.1
After notice of hearing, before hearing closed	1,069	13.7	834	15.0	71	12.4	164	9.8	7	3.1
After hearing closed, before decision	48	0.6	41	0.7	2	0.3	5	0.3	1	0.4
After Regional Director's decision and direction of election	157	2.0	137	2.5	4	0.7	16	1.0	1	0.4
After Board decision and direction of election	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By dismissal, total	726	9.3	357	6.4	114	19.9	255	15.3	25	11.0
Before notice of hearing	266	3.4	54	1.0	60	10.5	152	9.1	19	8.3
After notice of hearing, before hearing closed	119	1.5	38	0.7	19	3.3	62	3.7	2	0.9
After hearing closed, before decision	8	0.1	7	0.1	1	0.2	0	0.0	0	0.0
By Regional Director's decision	184	2.4	138	2.5	20	3.5	26	1.6	2	0.9
By Board decision	149	1.9	120	2.2	14	2.4	15	0.9	2	0.9

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1985

	AC	UC
Total, all	24	323
Certification amended or unit clarified	9	54
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	9	54
By Regional Director's decision	9	54
By Board decision	0	0
Dismissed	5	94
Before hearing	0	22
By Regional Director's decision	0	22
By Board decision	0	0
After hearing	5	72
By Regional Director's decision	4	69
By Board decision	1	3
Withdrawn	10	175
Before hearing	10	175
After hearing	0	0

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1985[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	4,743	121	3,795	29	795	3
Eligible voters	262,416	2,946	201,880	3,444	54,017	129
Valid votes	229,513	2,400	178,579	3,031	45,388	115
RC cases:						
Elections	3,545	70	2,858	18	598	1
Eligible voters	211,161	1,376	164,530	1,859	43,286	110
Valid votes	187,186	1,173	146,633	1,565	37,718	97
RM cases:						
Elections	204	11	151	0	41	1
Eligible voters	6,170	170	5,224	0	774	2
Valid votes	5,206	132	4,436	0	636	2
RD cases:						
Elections	865	34	702	9	119	1
Eligible voters	36,889	986	28,282	1,486	6,118	17
Valid votes	31,724	766	24,446	1,371	5,125	16
UD cases:						
Elections	129	6	84	2	37	—
Eligible voters	8,196	414	3,844	99	3,839	—
Valid votes	5,397	329	3,064	95	1,909	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1985

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	4,722	7	101	4,614	3,639	7	87	3,545	204	0	0	204	879	0	14	865
Rerun required	—	—	69	—	—	—	60	—	—	—	0	—	—	—	9	—
Runoff required	—	—	32	—	—	—	27	—	—	—	0	—	—	—	5	—
Consent elections	116	0	1	115	71	0	1	70	11	0	0	11	34	0	0	34
Rerun required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,785	6	68	3,711	2,925	6	61	2,858	151	0	0	151	709	0	7	702
Rerun required	—	—	47	—	—	—	43	—	—	—	0	—	—	—	4	—
Runoff required	—	—	21	—	—	—	18	—	—	—	0	—	—	—	3	—
Regional Director-directed	784	1	25	758	620	1	21	598	41	0	0	41	123	0	4	119
Rerun required	—	—	15	—	—	—	13	—	—	—	0	—	—	—	2	—
Runoff required	—	—	10	—	—	—	8	—	—	—	0	—	—	—	2	—
Board-directed	34	0	7	27	22	0	4	18	0	0	0	0	12	0	3	9
Rerun required	—	—	6	—	—	—	3	—	—	—	0	—	—	—	3	—
Runoff required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	3	0	0	3	1	0	0	1	1	0	0	1	1	0	0	1
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—

[1] The total of representation elections resulting in certification excludes elections held in UD cases which are included in the totals in Table 11.

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1985

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	4,722	440	9.3	186	3.9	113	2.4	553	11.7	299	6.3
By type of case:											
In RC cases	3,639	370	10.2	150	4.1	89	2.5	459	12.6	239	6.6
In RM cases	204	14	6.9	17	8.3	10	4.9	24	11.8	27	13.2
In RD cases	879	56	6.4	19	2.2	14	1.6	70	8.0	33	3.8
By type of election:											
Consent elections	116	8	6.9	16	13.8	3	2.6	11	9.5	19	16.4
Stipulated elections	3,785	327	8.6	143	3.8	85	2.2	412	10.9	228	6.0
Expedited elections	3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	784	100	12.8	27	3.4	23	2.9	123	15.7	50	6.4
Board-directed elections	34	5	14.7	0	0.0	2	5.9	7	20.6	2	5.9

[1] Number of elections in which objections were ruled on, regardless of number of allegations in each election.
[2] Number of elections in which challengers were ruled on, regardless of individual ballots challenged in each election.

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Table 11C.— Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1985[1]

	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	615	100.0	202	32.8	372	60.5	41	6.7
By type of case:								
RC cases	515	100.0	179	34.8	324	62.9	12	2.3
RM cases	24	100.0	4	16.7	12	50.0	8	33.3
RD cases	76	100.0	19	25.0	36	47.4	21	27.6
By type of election:								
Consent elections	11	100.0	4	36.4	6	54.5	1	9.1
Stipulated elections	461	100.0	146	31.7	286	62.0	29	6.3
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	134	100.0	51	38.1	72	53.7	11	8.2
Board-directed elections	9	100.0	1	11.1	8	88.9	0	0.0

[1] See Glossary of terms for definitions.
[2] Objections filed by more than one party in the same cases are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1985[1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained[2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	615	62	553	431	77.9	122	22.1
By type of case:							
RC cases	515	56	459	355	77.3	104	22.7
RM cases	24	0	24	21	87.5	3	12.5
RD cases	76	6	70	55	78.6	15	21.4
By type of election:							
Consent elections	11	0	11	7	63.6	4	36.4
Stipulated elections	461	49	412	331	80.3	81	19.7
Expedited elections	0	0	0	0	—	0	—
Regional Director-directed elections	134	11	123	89	72.4	34	27.6
Board-directed elections	9	2	7	4	57.1	3	42.9

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained. In 53 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1985[1]

	Total rerun elections[2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	65	100.0	21	32.3	44	67.7	32	49.2
By type of case:								
RC cases	53	100.0	18	34.0	35	66.0	27	50.9
RM cases	2	100.0	0	0.0	2	100.0	0	0.0
RD cases	10	100.0	3	30.0	7	70.0	5	50.0
By type of election:								
Consent elections	1	100.0	0	0.0	1	100.0	0	0.0
Stipulated elections	41	100.0	14	34.1	27	65.9	23	56.1
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	15	100.0	4	26.7	11	73.3	6	40.0
Board-directed elections	8	100.0	3	37.5	5	62.5	3	37.5

[1] See Glossary of terms for definitions.
[2] More than one rerun election was conducted in four cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1985

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total	129	94	72.9	35	27.1	8,196	5,716	69.7	2,480	30.3	5,397	65.8	2,888	35.2
AFL-CIO unions	90	67	74.4	23	25.6	6,866	5,150	75.0	1,715	25.0	4,323	63.0	2,304	33.6
Teamsters	26	17	65.4	9	34.6	734	235	32.0	499	68.0	601	81.9	340	41.4
Other national unions	3	3	100.0	0	0.0	55	55	100.0	0	0.0	44	80.0	39	70.9
Other local unions	10	7	70.0	3	30.0	541	276	51.0	265	49.0	429	79.3	205	37.9

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1985[1]

Participating unions	Total elections[2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections															
AFL-CIO	2,651	40.3	1,069	1,069	—	—	—	1,582	165,305	55,009	55,009	—	—	—	110,296
Teamsters	1,365	36.6	500	—	500	—	—	865	46,924	12,989	—	12,989	—	—	33,935
Other national unions	101	47.5	48	—	—	48	—	53	6,505	1,933	—	—	1,933	—	4,572
Other local unions	249	54.2	135	—	—	—	135	114	11,766	5,055	—	—	—	5,055	6,711
1-union elections	4,366	40.1	1,752	1,069	500	48	135	2,614	230,500	74,986	55,009	12,989	1,933	5,055	155,514
AFL-CIO v. AFL-CIO	59	72.9	43	43	—	—	—	16	6,033	2,536	2,536	—	—	—	3,497
AFL-CIO v. Teamsters	71	87.3	62	44	18	—	—	9	3,903	2,884	[illegible]	2,133	—	—	1,019
AFL-CIO v. National	17	82.4	14	10	—	4	—	3	3,608	2,518	840	—	1,678	—	1,090
AFL-CIO v. Local	45	93.3	42	20	—	—	22	3	5,153	4,574	2,129	—	—	2,445	579
Teamsters v. National	5	60.0	3	—	2	1	—	2	480	343	—	330	13	—	137
Teamsters v. Local	16	81.3	13	—	8	—	5	3	628	453	—	394	—	59	175
Teamsters v. Teamsters	3	0.0	0	—	0	—	—	3	121	0	—	0	—	—	121
National v. Local	4	75.0	3	—	—	1	2	1	242	212	—	—	42	170	30
Local v. Local	22	86.4	19	—	—	—	19	3	2,397	2,264	—	—	—	2,264	133
2-union elections	242	82.2	199	117	28	6	48	43	22,565	15,784	6,256	2,857	1,733	4,938	6,781
AFL-CIO v. AFL-CIO v. Teamsters	3	66.7	2	2	0	—	—	1	908	144	144	0	—	—	764
AFL-CIO v. Teamsters v. Local	1	100.0	1	0	0	—	1	0	65	65	0	0	—	65	0
AFL-CIO v. Local v. Local	2	100.0	2	0	—	—	2	0	182	182	0	—	—	182	0
3 (or more)-union elections	6	83.3	5	2	0	0	3	1	1,155	391	144	0	0	247	764
Total representation elections	4,614	42.4	1,956	1,188	528	54	186	2,658	254,220	91,161	61,409	15,846	3,666	10,240	163,059

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Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1985[1]—Continued

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Teamsters	Other national unions	Other local unions	In elections where no representative chosen
B. Elections in RC cases															
AFL-CIO	1,971	46.1	908	908	—	—	—	1,063	134,014	44,023	44,023	—	—	—	89,991
Teamsters	1,065	41.6	443	—	443	—	—	622	39,823	11,263	—	11,263	—	—	28,560
Other national unions	78	48.7	38	—	—	38	—	40	5,252	1,103	—	—	1,103	—	4,149
Other local unions	199	61.3	122	—	—	—	122	77	9,695	4,671	—	—	—	4,674	5,021
1-union elections	3,313	45.6	1,511	908	443	38	122	1,802	188,784	61,063	44,023	11,263	1,103	4,674	127,721
AFL-CIO v. AFL-CIO	55	74.5	41	41	—	—	—	14	5,889	2,421	2,421	—	—	—	3,468
AFL-CIO v. Teamsters	66	87.9	58	43	15	—	—	8	3,606	2,662	628	2,034	—	—	944
AFL-CIO v. National	16	81.3	13	10	—	3	—	3	3,111	2,021	840	—	1,181	—	1,090
AFL-CIO v. Local	42	92.9	39	19	—	—	20	3	4,774	4,195	1,876	—	—	2,319	579
Teamsters v. National	5	60.0	3	—	2	1	—	2	480	343	—	330	13	—	137
Teamsters v. Local	13	76.9	10	—	8	—	2	3	602	427	—	394	—	33	175
Teamsters v. Teamsters	3	0.0	0	—	0	—	—	3	121	0	—	0	—	—	121
National v. Local	4	75.0	3	—	—	1	2	1	242	212	—	—	42	170	30
Local v. Local	22	86.4	19	—	—	—	19	3	2,397	2,264	—	—	—	2,264	133
2-union elections	226	82.3	186	113	25	5	43	40	21,222	14,545	5,765	2,758	1,236	4,786	6,677
AFL-CIO v. AFL-CIO v. Teamsters	3	66.7	2	2	0	—	—	1	908	144	144	0	—	—	764
AFL-CIO v. Teamsters v. Local	1	100.0	1	0	0	—	1	0	65	65	0	0	—	65	0
AFL-CIO v. Local v. Local	2	100.0	2	0	—	—	2	0	182	182	0	—	—	182	0
3 (or more)-union elections	6	83.3	5	2	0	0	3	1	1,155	391	144	0	0	247	764
Total RC elections	3,545	48.0	1,702	1,023	468	43	168	1,843	211,161	75,999	49,932	14,021	2,339	9,707	135,162

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Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1985[1]—Continued

Participating unions	Total elections[2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases															
AFL-CIO	135	17.8	24	24	—	—	—	111	4,408	1,227	1,227	—	—	—	3,181
Teamsters	53	22.6	12	—	12	—	—	41	894	253	—	253	—	—	641
Other national unions	5	20.0	1	—	—	1	—	4	426	345	—	—	345	—	81
Other local unions	9	44.4	4	—	—	—	4	5	266	73	—	—	—	73	193
1-union elections	202	20.3	41	24	12	1	4	161	5,994	1,898	1,227	253	345	73	4,096
AFL-CIO v. Teamsters	2	100.0	2	1	1	—	—	0	176	176	123	53	—	—	0
2-union elections	2	100.0	2	1	1	0	0	0	176	176	123	53	0	0	0
Total RM elections	204	21.1	43	25	13	1	4	161	6,170	2,074	1,350	306	345	73	4,096
D. Elections in RD cases															
AFL-CIO	545	25.1	137	137	—	—	—	408	26,883	9,759	9,759	—	—	—	17,124
Teamsters	247	18.2	45	—	45	—	—	202	6,207	1,473	—	1,473	—	—	4,734
Other national unions	18	50.0	9	—	—	9	—	9	827	485	—	—	485	—	342
Other local unions	41	22.0	9	—	—	—	9	32	1,805	308	—	—	—	308	1,497
1-union elections	851	23.5	200	137	45	9	9	651	35,722	12,025	9,759	1,473	485	308	23,697
AFL-CIO v. AFL-CIO	4	50.0	2	2	—	—	—	2	144	115	115	—	—	—	29
AFL-CIO v. Teamsters	3	66.7	2	0	2	—	—	1	121	46	0	46	—	—	75
AFL-CIO v. National	1	100.0	1	0	—	1	—	0	497	497	0	—	497	—	0
AFL-CIO v. Local	3	100.0	3	1	—	—	2	0	379	379	253	—	—	126	0
Teamsters v. Local	3	100.0	3	—	0	—	3	0	26	26	—	0	—	26	0
2-union elections	14	78.6	11	3	2	1	5	3	1,167	1,063	368	46	497	152	104
Total RD elections	865	24.4	211	140	47	10	14	654	36,889	13,088	10,127	1,519	982	460	23,801

[1] See Glossary of terms for definitions.

[2] Includes each unit in which a choice regarding collective-bargaining agent was made; for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit.

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1985[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections													
AFL–CIO	146,711	32,171	32,171	—	—	—	15,763	32,100	32,100	—	—	—	66,677
Teamsters	42,046	7,714	—	7,714	—	—	3,775	9,350	—	9,350	—	—	21,207
Other national unions	5,805	1,130	—	—	1,130	—	593	1,413	—	—	1,413	—	2,669
Other local unions	10,092	3,117	—	—	—	3,117	1,116	1,905	—	—	—	1,905	3,954
1-union elections	204,654	44,132	32,171	7,714	1,130	3,117	21,247	44,768	32,100	9,350	1,413	1,905	94,507
AFL–CIO v. AFL–CIO	5,183	1,831	1,831	—	—	—	336	961	961	—	—	—	2,055
AFL–CIO v. Teamsters	3,244	2,144	675	1,469	—	—	206	307	121	186	—	—	587
AFL–CIO v. National	2,523	1,495	731	—	764	—	221	229	181	—	48	—	578
AFL–CIO v. Local	4,300	3,547	1,732	—	—	1,815	194	170	40	—	—	130	389
Teamsters v. National	376	266	—	147	119	—	1	23	—	11	12	—	86
Teamsters v. Local	562	386	—	277	—	109	26	23	—	2	—	21	127
Teamsters v. Teamsters	93	0	—	0	—	—	0	33	—	33	—	—	60
National v. Local	230	200	—	—	69	131	0	10	—	—	10	0	20
Local v. Local	1,905	1,693	—	—	—	1,693	89	31	—	—	—	31	92
2-union elections	18,416	11,562	4,969	1,893	952	3,748	1,073	1,787	1,303	232	70	182	3,994
AFL–CIO v. AFL–CIO v. Teamsters	857	100	95	5	—	—	19	185	9	176	—	—	553
AFL–CIO v. Teamsters v. Local	49	43	0	0	—	43	6	0	0	0	—	0	0
AFL–CIO v. Local v. Local	140	138	3	—	—	135	2	0	0	—	—	0	0
3 (or more)-union elections	1,046	281	98	5	0	178	27	185	9	176	0	0	553
Total representation elections	224,116	55,975	37,238	9,612	2,082	7,043	22,347	46,740	33,412	9,758	1,483	2,087	99,054

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1985[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
B. Elections in RC cases													
AFL-CIO	119,929	25,874	25,874	—	—	—	12,418	27,392	27,392	—	—	—	54,245
Teamsters	35,873	6,737	—	6,737	—	—	3,216	8,025	—	8,025	—	—	17,895
Other national unions	4,661	683	—	—	683	—	257	1,294	—	—	1,294	—	2,427
Other local unions	8,361	2,854	—	—	—	2,854	1,043	1,441	—	—	—	1,441	3,023
1-union elections	168,824	36,148	25,874	6,737	683	2,854	16,934	38,152	27,392	8,025	1,294	1,441	77,590
AFL-CIO v. AFL-CIO	5,049	1,752	1,752	—	—	—	304	952	952	—	—	—	2,041
AFL-CIO v. Teamsters	3,000	1,974	601	1,373	—	—	206	240	94	186	—	—	540
AFL-CIO v. National	2,135	1,292	725	—	567	—	36	229	181	—	48	—	578
AFL-CIO v. Local	3,992	3,263	1,585	—	—	1,678	170	170	40	—	—	130	389
Teamsters v. National	376	266	—	147	119	—	1	23	—	11	12	—	86
Teamsters v. Local	536	360	—	273	—	87	26	23	—	2	—	21	127
Teamsters v. Teamsters	93	0	—	0	—	—	0	33	—	33	—	—	60
National v. Local	230	200	—	—	69	131	0	10	—	—	10	0	20
Local v. Local	1,905	1,693	—	—	—	1,693	89	31	—	—	—	31	92
2-union elections	17,316	10,800	4,663	1,793	755	3,589	832	1,751	1,267	232	70	182	3,933
AFL-CIO v. AFL-CIO v. Teamsters	857	100	95	5	—	—	19	185	9	176	—	—	553
AFL-CIO v. Teamsters v. Local	49	43	0	0	—	43	6	0	0	0	—	0	0
AFL-CIO v. Local v. Local	140	138	3	—	—	135	2	0	0	—	—	0	0
3 (or more)-union elections	1,046	281	98	5	0	178	27	185	9	176	0	0	553
Total RC elections	187,186	47,229	30,635	8,535	1,438	6,621	17,793	40,088	28,668	8,433	1,364	1,623	82,076

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1985[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases													
AFL-CIO	3,650	770	770	—	—	—	151	844	844	—	—	—	1,885
Teamsters	794	153	—	153	—	—	91	155	—	155	—	—	395
Other national unions	418	197	—	—	197	—	143	21	—	—	21	—	57
Other local unions	211	59	—	—	—	59	3	50	—	—	—	50	98
1-union elections	5,073	1,179	770	153	197	59	389	1,070	844	155	21	50	2,435
AFL-CIO v. Teamsters	133	133	65	68	—	—	0	0	0	0	—	—	0
2-union elections	133	133	65	68	0	0	0	0	0	0	0	0	0
Total RM elections	5,206	1,312	835	221	197	59	389	1,070	844	155	21	50	2,435
D. Elections in RD cases													
AFL-CIO	23,132	5,527	5,527	—	—	—	3,194	3,864	3,864	—	—	—	10,547
Teamsters	5,379	824	—	824	—	—	468	1,170	—	1,170	—	—	2,917
Other national unions	726	250	—	—	250	—	193	98	—	—	98	—	185
Other local unions	1,520	204	—	—	—	204	69	414	—	—	—	414	833
1-union elections	30,757	6,805	5,527	824	250	204	3,924	5,546	3,864	1,170	98	414	14,482
AFL-CIO v. AFL-CIO	134	79	79	—	—	—	32	9	9	—	—	—	14
AFL-CIO v. Teamsters	111	37	9	28	—	—	0	27	27	0	—	—	47
AFL-CIO v. National	388	203	6	—	197	—	185	0	0	—	0	—	0
AFL-CIO v. Local	308	284	147	—	—	137	24	0	0	—	—	0	0
Teamsters v. Local	26	26	—	4	—	22	0	0	—	0	—	0	0
2-union elections	967	629	241	32	197	159	241	36	36	0	0	0	61
Total RD elections	31,724	7,434	5,768	856	447	363	4,165	5,582	3,900	1,170	98	414	14,543

[1] See Glossary of terms for definitions.

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Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	16	6	3	1	1	1	10	1,418	1,269	553	383	20	26	124	716	265
New Hampshire	10	6	5	1	0	0	4	625	591	271	259	12	0	0	320	164
Vermont	11	3	1	2	0	0	8	269	255	108	86	22	0	0	147	31
Massachusetts	204	127	107	17	0	3	77	8,453	7,277	3,618	2,929	579	20	90	3,659	3,159
Rhode Island	14	9	6	2	0	1	5	304	279	156	73	61	0	22	123	179
Connecticut	55	22	14	7	0	1	33	4,800	4,284	2,011	1,390	578	13	30	2,273	1,786
New England	310	173	136	30	1	6	137	15,869	13,955	6,717	5,120	1,272	59	266	7,238	5,584
New York	364	190	109	37	3	41	174	18,690	15,151	8,733	5,107	837	759	2,030	6,418	11,011
New Jersey	205	88	46	28	1	13	117	10,807	9,269	4,261	2,811	1,033	65	352	5,008	3,401
Pennsylvania	276	115	64	40	2	9	161	11,156	9,789	4,685	3,038	1,158	54	435	5,104	4,366
Middle Atlantic	845	393	219	105	6	63	452	40,653	34,209	17,679	10,956	3,028	878	2,817	16,530	18,778
Ohio	297	120	76	37	5	2	177	16,923	15,448	6,669	5,297	1,014	256	102	8,779	5,141
Indiana	134	55	28	23	2	2	79	5,839	5,539	2,451	1,721	573	33	124	3,088	1,990
Illinois	222	79	41	21	5	12	143	9,498	8,370	3,486	2,033	510	144	799	4,884	2,515
Michigan	300	126	87	34	1	4	174	17,101	14,860	7,031	5,679	1,058	153	141	7,829	6,471
Wisconsin	123	36	24	9	0	3	87	6,598	6,014	2,512	1,696	481	26	309	3,502	1,344
East North Central	1,076	416	256	124	13	23	660	55,959	50,231	22,149	16,426	3,636	612	1,475	28,082	17,461
Iowa	57	27	16	8	0	3	30	2,444	2,238	1,138	714	351	0	73	1,100	1,134
Minnesota	123	50	25	16	4	5	73	4,138	3,706	1,697	883	486	41	287	2,009	1,524
Missouri	144	60	32	22	2	4	84	6,652	5,946	2,629	1,502	1,015	48	64	3,317	1,650
North Dakota	9	7	4	3	0	0	2	310	281	166	132	34	0	0	115	228
South Dakota	5	3	3	0	0	0	2	167	158	64	46	18	0	0	94	29
Nebraska	10	4	2	2	0	0	6	1,509	1,217	371	363	8	0	0	846	83
Kansas	49	12	9	3	0	0	37	2,157	1,991	594	463	131	0	0	1,397	269
West North Central	397	163	91	54	6	12	234	17,379	15,537	6,659	4,103	2,043	89	424	8,878	4,917

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	9	2	*	1	0	0	7	905	825	301	205	96	0	0	524	37
Maryland	97	42	24	15	1	2	55	5,930	5,124	2,476	1,718	418	205	135	2,648	3,086
District of Columbia	22	14	9	1	0	4	8	708	583	328	238	12	15	63	255	350
Virginia	57	20	13	2	0	5	37	5,522	5,050	1,893	1,420	326	0	147	3,157	1,026
West Virginia	24	11	6	2	1	2	13	1,431	1,263	609	247	214	31	117	654	370
North Carolina	34	17	12	5	0	0	17	2,821	2,575	1,125	725	281	119	0	1,450	935
South Carolina	25	12	11	1	0	0	13	3,169	2,888	1,160	1,091	69	0	0	1,728	774
Georgia	82	32	22	7	1	2	50	7,739	7,197	3,187	2,511	594	75	7	4,010	2,411
Florida	86	33	17	12	0	4	53	6,130	5,845	2,539	1,837	447	12	243	3,306	2,041
South Atlantic	436	183	115	46	3	19	253	34,355	31,350	13,618	9,992	2,457	457	712	17,732	11,030
Kentucky	81	32	13	17	2	0	49	4,595	4,216	1,496	809	441	241	5	2,720	1,026
Tennessee	85	32	21	9	0	2	53	9,396	8,450	3,552	2,896	472	5	179	4,898	2,529
Alabama	67	35	31	3	0	1	32	5,512	5,049	2,549	2,368	101	41	39	2,500	2,563
Mississippi	30	13	11	1	0	1	17	3,761	3,474	1,759	1,610	100	0	49	1,715	1,649
East South Central	263	112	76	30	2	4	151	23,264	21,189	9,356	7,683	1,114	287	272	11,833	7,767
Arkansas	37	11	8	2	0	1	26	4,224	3,876	1,5[illegible]	1,483	41	0	43	2,309	811
Louisiana	44	23	14	7	0	2	21	2,792	2,522	964	670	267	0	27	1,558	831
Oklahoma	36	8	7	1	0	0	28	2,572	2,154	890	850	40	0	0	1,264	772
Texas	111	46	30	12	1	3	65	7,528	6,653	3,027	1,727	1,078	22	200	3,626	2,430
West South Central	228	88	59	22	1	6	140	17,116	15,205	6,448	4,730	1,426	22	270	8,757	4,844
Montana	35	14	9	2	2	1	21	1,208	1,105	432	115	93	200	24	673	486
Idaho	23	8	3	3	1	1	15	595	504	184	123	36	20	5	320	87
Wyoming	7	3	3	0	0	0	4	129	119	48	30	0	18	0	71	30
Colorado	46	22	19	3	0	0	24	2,643	2,218	968	863	60	40	5	1,250	891
New Mexico	13	3	3	0	0	0	10	678	645	276	78	33	16	149	369	40
Arizona	32	11	8	2	1	0	21	2,256	1,982	951	745	190	10	6	1,031	845
Utah	18	7	4	3	0	0	11	434	401	151	88	63	0	0	250	100

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Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	25	6	4	2	0	0	19	2,317	2,012	428	327	50	51	0	1,584	107
Mountain	199	74	53	15	4	2	125	10,260	8,986	3,438	2,369	525	355	139	5,548	2,586
Washington	164	51	32	12	2	5	113	5,161	4,226	2,116	1,455	321	77	263	2,110	2,640
Oregon	79	32	17	10	2	3	47	2,504	2,070	785	419	258	41	67	1,285	879
California	515	210	111	70	9	20	305	23,790	20,337	9,994	5,956	2,944	290	804	10,343	10,508
Alaska	30	17	7	8	0	2	13	784	696	378	102	182	17	77	318	446
Hawaii	13	10	5	1	3	1	3	1,050	735	617	285	76	48	208	118	935
Guam	3	2	1	0	0	1	1	1,701	1,543	428	390	0	0	38	1,115	112
Pacific	804	322	173	101	16	32	482	34,990	29,607	14,318	8,607	3,781	473	1,457	15,289	15,520
Puerto Rico	55	32	10	1	2	19	23	4,367	3,839	2,332	663	88	333	1,248	1,507	2,674
Virgin Islands	1	0	0	0	0	0	1	8	8	1	1	0	0	0	7	0
Outlying Areas	56	32	10	1	2	19	24	4,375	3,847	2,333	664	88	333	1,248	1,514	2,674
Total, all States and areas	4,614	1,956	1,188	528	54	186	2,658	254,220	224,116	102,715	70,650	19,370	3,565	9,130	121,401	91,161

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1985

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	12	4	1	1	1	1	8	1,188	1,055	431	272	9	26	124	624	114
New Hampshire	9	5	5	0	0	0	4	606	573	259	259	0	0	0	314	145
Vermont	7	3	1	2	0	0	4	231	217	97	75	22	0	0	120	31
Massachusetts	178	121	102	16	0	3	57	7,827	6,729	3,430	2,829	543	0	58	3,299	3,025
Rhode Island	12	9	6	2	0	1	3	287	265	153	73	58	0	22	112	179
Connecticut	52	22	14	7	0	1	30	4,765	4,252	2,008	1,390	575	13	30	2,244	1,786
New England	270	164	129	28	1	6	106	14,904	13,091	6,378	4,898	1,207	39	234	6,713	5,280
New York	323	181	103	37	3	38	142	16,615	13,440	7,795	4,401	831	759	1,804	5,645	9,801
New Jersey	187	83	44	27	1	11	104	10,095	8,673	4,024	2,612	1,022	65	325	4,649	3,292
Pennsylvania	219	105	59	37	1	8	114	9,487	8,331	4,061	2,559	1,071	32	399	4,270	3,790
Middle Atlantic	729	369	206	101	5	57	360	36,197	30,444	15,880	9,572	2,924	856	2,528	14,564	16,883
Ohio	235	105	66	32	5	2	130	14,406	13,155	5,606	4,335	913	256	102	7,549	4,091
Indiana	110	49	25	21	1	2	61	4,927	4,678	2,091	1,442	502	23	124	2,587	1,494
Illinois	171	65	37	14	2	12	106	8,606	7,549	3,147	1,819	454	75	799	4,402	2,162
Michigan	246	112	74	33	1	4	134	14,469	12,728	6,190	4,932	964	153	141	6,538	5,699
Wisconsin	94	28	16	9	0	3	66	5,722	5,225	2,153	1,353	470	26	304	3,072	906
East North Central	856	359	218	109	9	23	497	48,130	43,335	19,187	13,881	3,303	533	1,470	24,148	14,352
Iowa	45	22	14	6	0	2	23	1,886	1,713	899	528	333	0	38	814	940
Minnesota	82	37	17	14	3	3	45	2,658	2,468	1,163	548	369	36	210	1,305	1,001
Missouri	111	54	28	21	2	3	57	5,560	5,001	2,286	1,256	934	48	48	2,715	1,381
North Dakota	8	6	3	3	0	0	2	213	201	104	70	34	0	0	97	131
South Dakota	5	3	3	0	0	0	2	169	158	64	46	18	0	0	94	29
Nebraska	9	4	2	2	0	0	5	1,479	1,193	366	358	8	0	0	827	83
Kansas	40	11	8	3	0	0	29	1,943	1,791	515	384	131	0	0	1,276	192
West North Central	300	137	75	49	5	8	163	13,908	12,525	5,397	3,190	1,827	84	296	7,128	3,757

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	9	2	1	1	0	0	7	905	825	301	205	96	0	0	524	37
Maryland	82	37	21	14	0	2	45	4,741	4,163	1,996	1,512	365	0	119	2,167	2,371
District of Columbia	21	14	9	1	0	4	7	600	502	291	201	12	15	63	211	350
Virginia	50	18	11	2	0	5	32	4,956	4,532	1,660	1,204	309	0	147	2,872	684
West Virginia	24	11	6	2	1	2	13	1,431	1,263	609	247	214	31	117	654	370
North Carolina	31	15	10	5	0	0	16	2,694	2,457	1,068	703	246	119	0	1,389	892
South Carolina	23	11	11	0	0	0	12	3,135	2,854	1,142	1,091	51	0	0	1,712	752
Georgia	73	28	18	7	1	2	45	6,976	6,529	2,869	2,225	562	75	7	3,660	2,153
Florida	72	29	15	10	0	4	43	5,331	5,109	2,296	1,616	425	12	243	2,813	1,786
South Atlantic	385	165	102	42	2	19	220	30,769	28,234	12,232	9,004	2,280	252	696	16,002	9,395
Kentucky	64	29	11	17	1	0	35	3,637	3,388	1,214	693	401	115	5	2,174	732
Tennessee	65	25	17	7	0	1	40	7,449	6,910	2,921	2,541	249	5	126	3,989	1,711
Alabama	62	32	29	3	0	0	30	5,065	4,630	2,302	2,141	101	41	19	2,328	2,177
Mississippi	22	10	10	0	0	0	12	3,005	2,806	1,449	1,383	24	0	42	1,357	1,376
East South Central	213	96	67	27	1	1	117	19,156	17,734	7,886	6,758	775	161	192	9,848	5,996
Arkansas	32	11	8	2	0	1	21	3,915	3,597	1,474	1,415	38	0	21	2,123	811
Louisiana	40	21	13	6	0	2	19	2,348	2,155	812	575	210	0	27	1,343	646
Oklahoma	27	8	7	1	0	0	19	1,723	1,412	749	714	35	0	0	663	772
Texas	81	42	27	11	1	3	39	5,525	4,864	2,504	1,589	699	22	194	2,360	2,294
West South Central	180	82	55	20	1	6	98	13,511	12,028	5,539	4,293	982	22	242	6,489	4,523
Montana	26	13	8	2	2	1	13	1,085	992	398	94	80	200	24	594	475
Idaho	20	8	3	3	1	1	12	458	408	174	121	28	20	5	234	87
Wyoming	6	2	2	0	0	0	4	124	114	45	27	0	18	0	69	25
Colorado	32	14	12	2	0	0	18	1,871	1,503	543	453	45	40	5	960	321
New Mexico	11	3	3	0	0	0	8	378	365	141	78	17	16	30	224	40
Arizona	24	11	8	2	1	0	13	2,004	1,775	902	703	189	10	0	873	845
Utah	15	7	4	3	0	0	8	401	368	139	83	56	0	0	229	100

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Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	16	6	4	2	0	0	10	967	905	193	143	50	0	0	712	107
Mountain	150	64	44	14	4	2	86	7,288	6,430	2,535	1,702	465	304	64	3,895	2,000
Washington	95	39	23	9	2	5	56	3,873	3,166	1,719	1,109	272	77	261	1,447	2,334
Oregon	50	24	14	7	0	3	26	1,385	1,190	545	343	133	4	65	645	617
California	425	187	92	66	9	20	238	20,398	17,479	8,704	4,802	2,842	290	770	8,775	8,839
Alaska	27	16	7	7	0	2	11	744	664	356	92	170	17	77	308	418
Hawaii	13	10	5	1	3	1	3	1,050	735	617	285	76	48	208	118	935
Guam	3	2	1	0	0	1	1	1,701	1,543	428	390	0	0	38	1,115	112
Pacific	613	278	142	90	14	32	335	29,151	24,777	12,369	7,021	3,493	436	1,419	12,408	13,255
Puerto Rico	53	31	10	1	2	18	22	4,317	3,794	2,296	663	88	333	1,212	1,498	2,632
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	53	31	10	1	2	18	22	4,317	3,794	2,296	663	88	333	1,212	1,498	2,632
Total, all States and areas	3,749	1,745	1,048	481	44	172	2,004	217,331	192,392	89,699	60,982	17,344	3,020	8,353	102,693	78,073

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

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Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1985

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Maine	4	2	2	0	0	0	2	230	214	122	111	11	0	0	92	151
New Hampshire	1	1	0	1	0	0	0	19	18	12	0	12	0	0	6	19
Vermont	4	0	0	0	0	0	4	38	38	11	11	0	0	0	27	0
Massachusetts	26	6	5	1	0	0	20	626	548	188	100	36	20	32	360	134
Rhode Island	2	0	0	0	0	0	2	17	14	3	0	3	0	0	11	0
Connecticut	3	0	0	0	0	0	3	35	32	3	0	3	0	0	29	0
New England	40	9	7	2	0	0	31	965	864	339	222	65	20	32	525	304
New York	41	9	6	0	0	3	32	2,075	1,711	939	706	6	0	226	773	1,210
New Jersey	18	5	2	1	0	2	13	712	596	237	199	11	0	27	359	109
Pennsylvania	57	10	5	3	1	1	47	1,669	1,458	624	479	87	22	36	834	576
Middle Atlantic	116	24	13	4	1	6	92	4,456	3,765	1,799	1,384	104	22	289	1,966	1,895
Ohio	62	15	10	5	0	0	47	2,517	2,293	1,063	962	101	0	0	1,230	1,050
Indiana	24	6	3	2	1	0	18	912	861	360	279	71	10	0	501	496
Illinois	51	14	4	7	3	0	37	892	821	339	214	56	69	0	482	353
Michigan	54	14	13	1	0	0	40	2,632	2,132	841	747	94	0	0	1,291	772
Wisconsin	29	8	8	0	0	0	21	876	789	359	343	11	0	5	430	438
East North Central	220	57	38	15	4	0	163	7,829	6,896	2,962	2,545	333	79	5	3,934	3,109
Iowa	12	5	2	2	0	1	7	558	525	239	186	18	0	35	286	194
Minnesota	41	13	8	2	1	2	28	1,480	1,238	534	315	117	5	77	704	523
Missouri	33	6	4	1	0	1	27	1,092	945	343	246	81	0	16	602	269
North Dakota	1	1	1	0	0	0	0	97	80	62	62	0	0	0	18	97
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	1	0	0	0	0	0	1	30	24	5	5	0	0	0	19	0
Kansas	9	1	1	0	0	0	8	214	200	79	79	0	0	0	121	77
West North Central	97	26	16	5	1	4	71	3,471	3,012	1,262	913	216	5	128	1,750	1,160

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	15	5	3	1	1	0	10	1,189	961	480	206	53	205	16	481	715
District of Columbia	1	0	0	0	0	0	1	108	81	37	37	0	0	0	44	0
Virginia	7	2	2	0	0	0	5	566	518	233	216	17	0	0	285	342
West Virginia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
North Carolina	3	2	2	0	0	0	1	127	118	57	22	35	0	0	61	43
South Carolina	2	1	0	1	0	0	1	34	34	18	0	18	0	0	16	22
Georgia	9	4	4	0	0	0	5	763	668	318	286	32	0	0	350	258
Florida	14	4	2	2	0	0	10	799	736	243	221	22	0	0	493	255
South Atlantic	51	18	13	4	1	0	33	3,586	3,116	1,386	988	177	205	16	1,730	1,635
Kentucky	17	3	2	0	1	0	14	958	828	282	116	40	126	0	546	294
Tennessee	20	7	4	2	0	1	13	1,947	1,540	631	355	223	0	53	909	818
Alabama	5	3	2	0	0	1	2	447	419	247	227	0	0	20	172	386
Mississippi	8	3	1	1	0	1	5	756	668	310	227	76	0	7	358	273
East South Central	50	16	9	3	1	3	34	4,108	3,455	1,470	925	339	126	80	1,985	1,771
Arkansas	5	0	0	0	0	0	5	309	279	93	68	3	0	22	186	0
Louisiana	4	2	1	1	0	0	2	444	367	152	95	57	0	0	215	185
Oklahoma	9	0	0	0	0	0	9	849	742	141	136	5	0	0	601	0
Texas	30	4	3	1	0	0	26	2,003	1,789	523	138	379	0	6	1,266	136
West South Central	48	6	4	2	0	0	42	3,605	3,177	909	437	444	0	28	2,268	321
Montana	9	1	1	0	0	0	8	123	113	34	21	13	0	0	79	11
Idaho	3	0	0	0	0	0	3	137	96	10	2	8	0	0	86	0
Wyoming	1	1	1	0	0	0	0	5	5	3	3	0	0	0	2	5
Colorado	14	8	7	1	0	0	6	772	715	425	410	15	0	0	290	570
New Mexico	2	0	0	0	0	0	2	300	280	135	0	16	0	119	145	0
Arizona	8	0	0	0	0	0	8	252	207	49	42	1	0	6	158	0
Utah	3	0	0	0	0	0	3	33	33	12	5	7	0	0	21	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1985—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	9	0	0	0	0	0	9	1,350	1,107	235	184	0	51	0	872	0
Mountain	49	10	9	1	0	0	39	2,972	2,556	903	667	60	51	125	1,653	586
Washington	69	12	9	3	0	0	57	1,288	1,060	397	346	49	0	2	663	306
Oregon	29	8	3	3	2	0	21	1,119	880	240	76	125	37	2	640	262
California	90	23	19	4	0	0	67	3,392	2,858	1,290	1,154	102	0	34	1,568	1,669
Alaska	3	1	0	1	0	0	2	40	32	22	10	12	0	0	10	28
Hawaii	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	191	44	31	11	2	0	147	5,839	4,830	1,949	1,586	288	37	38	2,891	2,265
Puerto Rico	2	1	0	0	0	1	1	50	45	36	0	0	0	36	9	42
Virgin Islands	1	0	0	0	0	0	1	8	8	1	1	0	0	0	7	0
Outlying Areas	3	1	0	0	0	1	2	58	53	37	1	0	0	36	16	42
Total, all States and areas	865	211	140	47	10	14	654	36,889	31,724	13,016	9,668	2,026	545	777	18,708	13,088

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Food and kindred products	177	70	38	30	0	2	107	13,721	12,352	5,649	3,857	1,684	1	107	6,703	5,223
Tobacco manufacturers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Textile mill products	43	18	13	2	0	3	25	6,474	5,873	2,407	2,272	103	0	32	3,466	1,408
Apparel and other finished products made from fabric and similar materials	29	15	9	3	0	3	14	3,264	2,968	1,644	1,068	409	0	167	1,324	1,923
Lumber and wood products (except furniture)	96	31	24	5	1	1	65	5,714	5,192	2,128	1,771	290	17	50	3,064	1,458
Furniture and fixtures	58	24	17	7	0	0	34	4,269	3,811	1,825	1,623	194	8	0	1,986	1,467
Paper and allied products	61	25	21	4	0	0	36	4,476	4,117	1,909	1,306	261	133	209	2,208	1,717
Printing, publishing, and allied products	124	51	29	7	0	15	73	4,965	4,462	2,043	1,020	548	8	467	2,419	1,934
Chemicals and allied products	81	29	16	11	1	1	52	4,313	3,839	1,622	1,218	281	22	101	2,217	1,311
Petroleum refining and related industries	19	9	6	2	1	0	10	1,085	997	439	386	42	11	0	558	241
Rubber and miscellaneous plastic products	75	19	12	6	0	1	56	7,593	6,826	2,801	2,337	364	0	100	4,025	1,388
Leather and leather products	11	6	5	0	0	1	5	2,071	1,837	1,041	840	0	0	201	796	1,499
Stone, clay, glass, and concrete products	71	33	18	11	1	3	38	3,979	3,592	1,520	1,260	219	19	22	2,072	1,411
Primary metal industries	111	45	31	11	2	1	66	6,572	5,855	2,447	1,889	382	64	112	3,408	2,138
Fabricated metal products (except machinery and transportation equipment)	168	55	43	10	1	1	113	12,109	11,214	4,813	3,473	819	272	249	6,401	2,954
Machinery (except electrical)	188	74	54	15	1	4	114	13,478	12,345	5,615	4,091	896	138	490	6,730	4,575
Electrical and electronic machinery, equipment, and supplies	81	27	20	3	1	3	54	8,787	7,808	3,195	2,405	449	243	98	4,613	1,714
Aircraft and parts	105	42	35	4	0	3	63	10,679	9,557	4,277	3,874	229	6	168	5,280	2,453
Ship and boat building and repairing	15	6	4	0	0	2	9	1,785	1,661	708	622	29	13	44	953	641
Automotive and other transportation equipment	11	2	2	0	0	0	9	1,791	1,666	457	266	191	0	0	1,209	15
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	26	12	9	2	1	0	14	1,681	1,493	707	454	143	27	83	786	432
Miscellaneous manufacturing industries	178	69	34	22	1	12	109	9,269	8,275	3,932	2,401	782	32	717	4,343	3,920
Manufacturing	1,728	662	440	155	11	56	1,066	128,075	115,740	51,179	38,433	8,315	1,014	3,417	64,561	39,822
Metal mining	4	0	0	0	0	0	4	782	741	131	131	0	0	0	610	0
Coal mining	17	6	0	1	5	0	11	1,228	1,148	439	7	15	401	16	709	444
Oil and gas extraction	8	3	1	2	0	0	5	681	601	499	227	272	0	0	102	565

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Mining and quarrying of nonmetallic minerals (except fuels)	9	3	3	0	0	0	6	187	175	53	36	1	0	16	122	28
Mining	38	12	4	3	5	0	26	2,878	2,665	1,122	401	288	401	32	1,543	1,037
Construction	198	76	57	11	2	6	122	4,391	3,759	1,643	1,226	305	10	102	2,116	1,365
Wholesale trade	430	186	82	92	6	6	244	15,180	13,317	5,926	3,022	2,368	137	399	7,391	4,917
Retail trade	550	203	139	54	2	8	347	19,617	16,677	7,475	5,347	1,496	78	554	9,202	6,557
Finance, insurance, and real estate	78	46	30	10	1	5	32	3,529	3,250	1,524	932	323	5	264	1,726	1,043
U.S. Postal Service	2	1	0	0	0	1	1	270	233	166	45	0	0	121	67	156
Local and suburban transit and interurban highway passenger transportation	46	19	3	12	0	4	27	2,485	2,083	1,044	418	436	0	190	1,039	937
Motor freight transportation and warehousing	300	116	12	93	3	8	184	8,542	7,703	3,269	501	2,397	109	262	4,434	2,508
Water transportation	14	8	5	0	2	1	6	239	206	120	93	5	19	3	86	143
Other transportation	33	13	3	8	0	2	20	1,166	1,028	378	224	132	8	14	650	159
Communication	114	46	40	6	0	0	68	2,958	2,720	1,163	974	155	30	4	1,557	957
Electric, gas, and sanitary services	81	32	19	12	1	0	49	3,630	3,380	1,505	1,139	321	45	0	1,875	873
Transportation, communication, and other utilities	588	234	82	131	6	15	354	19,020	17,120	7,479	3,349	3,446	211	473	9,641	5,577
Hotels, rooming houses, camps, and other lodging places	77	34	26	5	1	2	43	5,716	4,880	2,011	1,685	143	2	181	2,869	2,070
Personal services	46	17	9	4	0	4	29	1,109	983	430	165	127	0	138	553	452
Automotive repair, services, and garages	85	36	14	20	0	2	49	1,453	1,303	634	300	327	0	7	669	632
Motion pictures	10	6	6	0	0	0	4	291	228	128	128	0	0	0	100	140
Amusement and recreation services (except motion pictures)	43	15	10	3	1	1	28	1,457	1,127	498	210	200	4	84	629	603
Health services	356	197	139	14	11	33	159	36,049	30,140	15,372	10,822	1,217	1,413	1,920	14,768	17,853
Educational services	29	17	12	2	0	3	12	2,908	2,498	1,291	1,030	56	0	205	1,207	2,257
Membership organizations	21	17	9	0	1	7	4	580	480	275	171	1	24	79	205	310
Business services	247	157	105	18	4	30	90	8,714	7,242	4,323	2,652	538	222	911	2,919	5,092
Miscellaneous repair services	24	11	7	3	1	0	13	506	443	227	148	61	18	0	216	241

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Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1985—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Museums, art galleries, botanical and zoological gardens	2	0	0	0	0	0	2	169	156	70	54	0	0	16	86	0
Legal services	5	4	3	0	0	1	1	206	165	113	43	0	0	70	52	149
Social services	42	18	12	0	1	5	24	1,591	1,250	658	424	70	17	147	592	723
Miscellaneous services	5	1	0	1	0	0	4	65	59	31	10	16	5	0	28	12
Services	992	530	352	70	20	88	462	60,814	50,954	26,061	17,842	2,756	1,705	3,758	24,893	30,534
Public administration	10	6	2	2	1	1	4	446	401	140	53	73	4	10	261	153
Total, all industrial groups	4,614	1,956	1,188	528	54	186	2,658	254,220	224,116	102,715	70,650	19,370	3,565	9,130	121,401	91,161

[1] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1985[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL–CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
					A. Certification elections (RC and RM)									
Total RC and RM elections	217,331	3,749	100.0	—	1,048	100.0	481	100.0	44	100.0	172	100.0	2,004	100.0
Under 10	4,946	875	23.3	23.3	295	28.1	169	35.1	11	25.0	46	26.7	354	17.7
10 to 19	11,025	783	20.9	44.2	211	20.1	142	29.6	10	22.6	21	12.2	399	19.9
20 to 29	10,493	437	11.7	55.9	122	11.6	55	11.5	7	15.9	21	12.2	232	11.6
30 to 39	10,554	309	8.2	64.1	74	7.1	26	5.4	3	6.8	12	7.1	194	9.7
40 to 49	10,239	232	6.2	70.3	60	5.7	21	4.4	5	11.3	10	5.8	136	6.8
50 to 59	8,757	162	4.3	74.6	43	4.0	9	1.9	1	2.3	11	6.5	98	4.9
60 to 69	9,308	144	3.8	78.4	43	4.0	10	2.1	1	2.3	4	2.3	86	4.3
70 to 79	7,857	106	2.8	81.2	26	2.5	8	1.7	1	2.3	6	3.5	65	3.2
80 to 89	8,051	95	2.5	83.7	32	3.1	7	1.5	0	0.0	9	5.2	47	2.4
90 to 99	7,886	84	2.2	85.9	20	1.9	5	1.0	0	0.0	3	1.7	56	2.8
100 to 109	5,520	53	1.4	87.3	17	1.6	5	1.0	0	0.0	0	0.0	31	1.6
110 to 119	5,135	45	1.2	88.5	9	0.9	3	0.6	0	0.0	2	1.2	31	1.6
120 to 129	5,088	41	1.1	89.6	9	0.9	3	0.6	1	2.3	2	1.2	26	1.3
130 to 139	5,241	39	1.0	90.6	9	0.9	2	0.4	0	0.0	4	2.3	24	1.2
140 to 149	4,176	29	0.8	91.4	8	0.8	2	0.4	0	0.0	3	1.7	16	0.8
150 to 159	3,835	25	0.7	92.1	7	0.7	0	0.0	0	0.0	3	1.7	15	0.8
160 to 169	3,448	21	0.6	92.7	3	0.3	2	0.4	0	0.0	2	1.2	14	0.7
170 to 179	2,960	17	0.5	93.2	3	0.3	2	0.4	1	2.3	0	0.0	11	0.5
180 to 189	3,132	17	0.5	93.7	4	0.4	1	0.2	0	0.0	1	0.6	11	0.5
190 to 199	2,518	13	0.4	94.1	3	0.3	1	0.2	0	0.0	0	0.0	9	0.4
200 to 299	23,717	99	2.6	96.7	25	2.4	4	0.8	0	0.0	9	5.2	61	3.0
300 to 399	17,554	51	1.4	98.1	14	1.3	2	0.4	1	2.3	3	1.7	31	1.6
400 to 499	10,539	24	0.6	98.7	4	0.4	0	0.0	0	0.0	0	0.0	20	1.0
500 to 599	9,282	17	0.5	99.2	1	0.1	2	0.4	1	2.3	0	0.0	13	0.6
600 to 799	11,943	18	0.5	99.7	4	0.4	0	0.0	1	2.3	0	0.0	13	0.6
800 to 999	3,427	4	0.1	99.8	1	0.1	0	0.0	0	0.0	0	0.0	3	0.1
1,000 to 1,999	10,700	9	0.2	100.0	1	0.1	0	0.0	0	0.0	0	0.0	8	0.4

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Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1985[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL–CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
					B. Decertification elections (RD)									
Total RD elections	36,889	865	100.0	—	140	100.0	47	100.0	10	100.0	14	100.0	654	100.0
Under 10	1,328	240	27.7	27.7	12	8.6	15	31.9	1	10.0	4	28.6	208	31.8
10 to 19	2,762	199	23.0	50.7	21	15.1	16	34.1	0	0.0	4	28.6	158	24.2
20 to 29	3,020	124	14.3	65.0	20	14.3	7	14.9	4	40.0	0	0.0	93	14.2
30 to 39	2,350	70	8.1	73.1	17	12.1	1	2.1	2	20.0	1	7.1	49	7.5
40 to 49	1,781	40	4.6	77.7	8	5.7	1	2.1	0	0.0	2	14.4	29	4.4
50 to 59	2,016	37	4.3	82.0	10	7.1	2	4.4	1	10.0	0	0.0	24	3.7
60 to 69	1,331	21	2.4	84.4	7	5.1	0	0.0	0	0.0	1	7.1	13	2.0
70 to 79	1,482	20	2.3	86.7	4	2.9	1	2.1	0	0.0	1	7.1	14	2.1
80 to 89	1,168	14	1.6	88.3	5	3.6	1	2.1	0	0.0	0	0.0	8	1.2
90 to 99	1,324	14	1.6	89.9	5	3.6	0	0.0	0	0.0	0	0.0	9	1.4
100 to 109	1,051	10	1.2	91.1	2	1.4	0	0.0	0	0.0	0	0.0	8	1.2
110 to 119	693	6	0.7	91.8	3	2.1	0	0.0	0	0.0	1	7.1	2	0.3
120 to 129	1,246	10	1.2	93.0	2	1.4	1	2.1	0	0.0	0	0.0	7	1.1
130 to 139	682	5	0.6	93.6	3	2.1	0	0.0	0	0.0	0	0.0	2	0.3
140 to 149	1,008	7	0.8	94.4	2	1.4	1	2.1	0	0.0	0	0.0	4	0.6
150 to 159	773	5	0.6	95.0	3	2.1	0	0.0	0	0.0	0	0.0	2	0.3
160 to 169	816	5	0.6	95.6	3	2.1	0	0.0	0	0.0	0	0.0	2	0.3
170 to 199	754	4	0.5	96.1	2	1.4	0	0.0	0	0.0	0	0.0	2	0.3
200 to 299	4,284	18	2.1	98.2	7	5.1	0	0.0	1	10.0	0	0.0	10	1.5
300 to 499	4,656	12	1.4	99.6	3	2.1	1	2.1	1	10.0	0	0.0	7	1.1
500 to 799	2,364	4	0.4	100.0	1	0.7	0	0.0	0	0.0	0	0.0	3	0.5

[1] See Glossary of terms for definitions.

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Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1985[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2]29,469	100.0	——	20,086	100.0	7,097	100.0	967	100.0	245	100.0	40	100.0	23	100.0	238	100.0	724	100.0	49	100.0
Under 10	7,728	26.2	26.2	4,877	24.3	2,081	29.3	407	42.1	99	40.4	22	55.0	1	4.3	81	34.0	144	19.9	16	32.7
10–19	2,801	9.5	35.7	2,128	10.6	408	5.7	141	14.6	44	18.0	4	10.0	0	0.0	35	14.7	35	4.8	6	12.2
20–29	2,030	6.9	42.6	1,499	7.5	360	5.1	96	9.9	19	7.8	1	2.5	0	0.0	20	8.4	30	4.1	5	10.2
30–39	1,524	5.2	47.8	1,155	5.8	258	3.6	47	4.9	17	6.9	1	2.5	0	0.0	18	7.6	27	3.7	1	2.0
40–49	935	3.2	51.0	720	3.6	152	2.1	26	2.7	5	2.0	1	2.5	1	4.3	10	4.2	20	2.8	0	0.0
50–59	1,301	4.4	55.4	899	4.5	298	4.2	40	4.1	3	1.2	1	2.5	0	0.0	22	9.2	38	5.2	0	0.0
60–69	744	2.5	57.9	558	2.8	136	1.9	12	1.2	6	2.4	1	2.5	0	0.0	10	4.2	18	2.5	3	6.1
70–79	707	2.4	60.3	548	2.7	125	1.8	6	0.6	2	0.8	0	0.0	1	4.3	6	2.5	19	2.6	0	0.0
80–89	497	1.7	62.0	399	2.0	86	1.2	4	0.4	0	0.0	0	0.0	0	0.0	4	1.7	3	0.4	1	2.0
90–99	314	1.1	63.1	248	1.2	47	0.7	7	0.7	2	0.8	0	0.0	0	0.0	2	0.8	8	1.1	0	0.0
100–109	1,497	5.1	68.2	963	4.8	431	6.1	36	3.7	9	3.7	2	5.0	2	8.7	6	2.5	46	6.4	2	4.1
110–119	184	0.6	68.8	141	0.7	29	0.4	7	0.7	0	0.0	0	0.0	1	4.3	2	0.8	4	0.6	0	0.0
120–129	408	1.4	70.2	302	1.5	89	1.3	4	0.4	2	0.8	0	0.0	0	0.0	2	0.8	9	1.2	0	0.0
130–139	182	0.6	70.8	143	0.7	28	0.4	1	0.1	2	0.8	0	0.0	2	8.7	3	1.3	2	0.3	1	2.0
140–149	142	0.5	71.3	104	0.5	27	0.4	3	0.3	2	0.8	0	0.0	0	0.0	0	0.0	6	0.8	0	0.0
150–159	538	1.8	73.1	373	1.9	129	1.8	11	1.1	2	0.8	0	0.0	3	13.0	0	0.0	19	2.6	1	2.0
160–169	130	0.4	73.5	96	0.5	25	0.4	2	0.2	1	0.4	0	0.0	0	0.0	0	0.0	6	0.8	0	0.0
170–179	150	0.5	74.0	113	0.6	29	0.4	3	0.3	2	0.8	0	0.0	0	0.0	1	0.4	2	0.3	0	0.0
180–189	161	0.6	74.6	118	0.6	24	0.3	6	0.6	0	0.0	0	0.0	0	0.0	2	0.8	9	1.2	2	4.1
190–199	48	0.2	74.8	42	0.2	5	0.1	1	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200–299	1,684	5.7	80.5	1,141	5.7	432	6.1	34	3.5	9	3.7	3	7.5	4	17.4	6	2.5	51	7.0	4	8.2
300–399	1,027	3.5	84.0	701	3.5	275	3.9	8	0.8	1	0.4	0	0.0	0	0.0	4	1.7	37	5.1	1	2.0
400–499	597	2.0	86.0	385	1.9	177	2.5	8	0.8	3	1.2	1	2.5	0	0.0	2	0.8	21	2.9	0	0.0
500–599	716	2.4	88.4	469	2.3	207	2.9	8	0.8	4	1.6	1	2.5	0	0.0	1	0.4	24	3.3	2	4.1
600–699	338	1.2	89.6	228	1.1	90	1.3	5	0.5	0	0.0	1	2.5	0	0.0	0	0.0	13	1.8	1	2.0
700–799	205	0.7	90.3	126	0.6	65	0.9	3	0.3	2	0.8	0	0.0	6	26.1	0	0.0	3	0.4	0	0.0
800–899	228	0.8	91.1	143	0.7	69	1.0	6	0.6	0	0.0	0	0.0	0	0.0	0	0.0	9	1.2	1	2.0
900–999	114	0.4	91.5	69	0.3	38	0.5	2	0.2	0	0.0	0	0.0	0	0.0	0	0.0	5	0.7	0	0.0
1,000–1,999	1,034	3.5	95.0	579	2.9	395	5.6	15	1.6	3	1.2	1	2.5	1	4.3	1	0.4	39	5.4	0	0.0
2,000–2,999	471	1.6	96.6	261	1.3	176	2.5	5	0.5	0	0.0	0	0.0	1	4.3	0	0.0	27	3.7	1	2.0
3,000–3,999	277	0.9	97.5	159	0.8	107	1.5	3	0.3	1	0.4	0	0.0	0	0.0	0	0.0	7	1.0	0	0.0

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Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1985[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
4,000–4,999	119	0.4	97.9	65	0.3	49	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5	0.7	0	0.0
5,000–9,999	363	1.2	99.1	181	0.9	146	2.1	8	0.8	3	1.2	0	0.0	0	0.0	0	0.0	24	3.3	1	2.0
Over 9,999	275	0.9	100.0	153	0.8	104	1.5	2	0.2	2	0.8	0	0.0	0	0.0	0	0.0	14	1.9	0	0.0

[1] See Glossary of terms for definitions.
[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1985 and Cumulative Totals, Fiscal Years 1936–1985

	Fiscal year 1985									July 5, 1937–Sept. 30, 1985	
	Number of proceedings[1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal[2]	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	212	160	46	1	5	—	—	—	—	—	—
On petitions for review and/or enforcement	189	141	42	1	5	100.0	100.0	100.0	100.0	9,096	100.0
Board orders affirmed in full	158	118	35	1	4	83.7	83.3	100.0	80.0	5,844	64.2
Board orders affirmed with modification	9	7	2	0	0	5.0	4.8	0.0	0.0	1,343	14.8
Remanded to Board	12	6	5	0	1	4.2	11.9	0.0	20.0	438	4.8
Board orders partially affirmed and partially remanded	2	2	0	0	0	1.4	0.0	0.0	0.0	165	1.8
Board orders set aside	8	8	0	0	0	5.7	0.0	0.0	0.0	1,306	14.4
On petitions for contempt	23	19	4	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	4	4	0	0	0	21.1	0.0	—	—	—	—
Court orders holding respondent in contempt	17	13	4	0	0	68.4	100.0	—	—	—	—
Court orders denying petition	2	2	0	0	0	10.5	0.0	—	—	—	—
Court orders directing compliance without contempt adjudication	0	0	0	0	0	0.0	0.0	—	—	—	—
Contempt petitions withdrawn without compliance	0	0	0	0	0	0.0	0.0	—	—	—	—
Proceedings decided by U.S. Supreme Court	3	1	1	1	0	100.0	100.0	100.0	—	242	100.0
Board orders affirmed in full	2	1	1	0	0	100.0	100.0	0.0	—	146	60.3
Board orders affirmed with modification	0	0	0	0	0	0.0	0.0	0.0	—	18	7.5
Board orders set aside	1	0	0	1	0	0.0	0.0	100.0	—	40	16.5
Remanded to Board	0	0	0	0	0	0.0	0.0	0.0	—	19	7.9
Remanded to court of appeals	0	0	0	0	0	0.0	0.0	0.0	—	16	6.6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	0.0	0.0	0.0	—	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	0.0	0.0	0.0	—	1	0.4
Contempt cases enforced	0	0	0	0	0	0.0	0.0	0.0	—	1	0.4

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.

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Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1985, Compared With 5-Year Cumulative Totals, Fiscal Years 1980 Through 1984[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1985	Total fiscal years 1980–1984	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1985		Cumulative fiscal years 1980–1984		Fiscal year 1985		Cumulative fiscal years 1980–1984		Fiscal year 1985		Cumulative fiscal years 1980–1984		Fiscal year 1985		Cumulative fiscal years 1980–1984		Fiscal year 1985		Cumulative fiscal years 1980–1985	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	189	1,949	158	83.6	1,282	65.8	9	4.8	213	10.9	12	6.3	132	6.8	2	1.1	55	2.8	8	4.2	267	13.7
1. Boston, MA	2	76	2	100.0	49	64.5	0	0.0	12	15.8	0	0.0	5	6.6	0	0.0	2	2.6	0	0.0	8	10.5
2. New York, NY	17	143	13	76.5	100	69.9	2	11.7	14	9.8	1	5.9	6	4.2	0	0.0	4	2.8	1	5.9	19	13.3
3. Phila., PA	20	192	17	85.0	129	67.2	1	5.0	16	8.3	2	10.0	15	7.8	0	0.0	8	4.2	0	0.0	24	12.5
4. Richmond, VA	9	149	9	100.0	81	54.4	0	0.0	27	18.1	0	0.0	8	5.4	0	0.0	3	2.0	0	0.0	30	20.1
5. New Orleans, LA	11	178	9	81.8	122	68.5	1	9.1	17	9.6	0	0.0	11	6.2	1	9.1	4	2.3	0	0.0	24	13.4
6. Cincinnati, OH	35	306	27	77.0	189	61.8	3	8.6	40	13.1	1	2.9	19	6.2	1	2.9	4	1.3	3	8.6	54	17.6
7. Chicago, IL	16	187	15	93.7	101	54.0	0	0.0	31	16.6	0	0.0	10	5.4	0	0.0	2	1.1	1	6.3	43	22.9
8. St. Louis, MO	17	120	14	82.4	86	71.7	0	0.0	17	14.2	3	17.6	6	5.0	0	0.0	2	1.6	0	0.0	9	7.5
9. San Francisco, CA	38	371	34	89.5	264	71.2	1	2.6	26	7.0	1	2.6	32	8.6	0	0.0	15	4.0	2	5.3	34	9.2
10. Denver, CO	3	75	3	100.0	56	74.7	0	0.0	3	4.0	0	0.0	6	8.0	0	0.0	3	4.0	0	0.0	7	9.3
11. Atlanta, GA[2]	12	52	10	83.4	37	71.1	1	8.3	5	9.6	0	0.0	2	3.9	0	0.0	2	3.9	1	8.3	6	11.5
Washington, DC	9	100	5	55.6	68	68.0	0	0.0	5	5.0	4	44.4	12	12.0	0	0.0	6	6.0	0	0.0	9	9.0

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.
[2] Commenced operations October 1, 1981.

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Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1985

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1985
		Pending in district court Oct. 1, 1984	Filed in district court fiscal year 1985		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	[1]2	1	1	2	2	0	0	0	0	0	0
Under Sec. 10(j) total	41	1	40	39	20	0	15	1	3	0	2
8(a)(1)	4	0	4	4	3	0	1	0	0	0	0
8(a)(1)(3)	8	0	8	8	4	0	2	1	1	0	0
8(a)(1)(3)(4)	4	0	4	4	2	0	2	0	0	0	0
8(a)(1)(3)(5)	17	1	16	17	6	0	9	0	2	0	0
8(a)(1)(5)	4	0	4	4	4	0	0	0	0	0	0
8(b)(1)	4	0	4	2	1	0	1	0	0	0	2
Under Sec. 10(l) total	62	13	49	54	23	2	27	1	1	0	8
8(b)(4)(A)	1	1	0	0	0	0	0	0	0	0	1
8(b)(4)(A)(B)	1	0	1	1	0	1	0	0	0	0	0
8(b)(4)(A)(B); 8(e)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B)	33	5	28	31	13	1	15	1	1	0	2
8(b)(4)(B)(D)	3	1	2	3	2	0	1	0	0	0	0
8(b)(4)(B); 7(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(D)	6	3	3	4	2	0	2	0	0	0	2
8(b)(4)(D); 7(C)	2	0	2	1	0	0	1	0	0	0	1
8(b)(7)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(C)	11	2	9	10	4	0	6	0	0	0	1
8(e)	1	1	0	0	0	0	0	0	0	0	1

[1] In courts of appeals.

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Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1985

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	52	45	7	25	21	4	16	15	1	11	9	2
NLRB-initiated actions or interventions	1	1	0	1	1	0	0	0	0	0	0	0
To enforce subpoena	0	0	0	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	0	0	0	0	0	0	0	0	0	0	0	0
To prevent conflict between NLRA and another statute	1	1	0	1	1	0	0	0	0	0	0	0
Action by other parties	51	44	7	24	20	4	16	15	1	11	9	2
To review non-final orders	3	3	0	3	3	0	0	0	0	0	0	0
To restrain NLRB from	18	15	3	2	1	1	6	6	0	10	8	2
Filing proof of claim in bankruptcy	1	0	1	0	0	0	0	0	0	1	0	1
Proceeding in R case	3	3	0	0	0	0	3	3	0	0	0	0
Proceeding in unfair labor practice case	13	11	2	1	0	1	3	3	0	9	8	1
Enforcing subpoena	0	0	0	0	0	0	0	0	0	0	0	0
Acting in Equal Access to Justice Act Case	1	1	0	1	1	0	0	0	0	0	0	0
To compel NLRB to	28	25	3	19	16	3	9	9	0	0	0	0
Comply with a subpoena	3	3	0	0	0	0	3	3	0	0	0	0
Issue complaint	8	8	0	4	4	0	4	4	0	0	0	0
Take action in R case	1	1	0	0	0	0	1	1	0	0	0	0
Comply with Freedom of Information Act[1]	5	3	2	4	2	2	1	1	0	0	0	0
Pay fees under Equal Access to Justice Act	11	10	1	11	10	1	0	0	0	0	0	0
Other	2	1	1	0	0	0	1	0	1	1	1	0
To reopen bankruptcy to consider Board's claim	1	0	1	0	0	0	1	0	1	0	0	0
To remove Board proceeding to bankruptcy court	1	1	0	0	0	0	0	0	0	1	1	0

[1] FOIA cases are categorized regarding court determination depending on whether NLRB substantially prevailed.

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1985[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1984	1	1	0	0	0
Received fiscal 1985	3	3	0	0	0
On docket fiscal 1985	4	4	0	0	0
Closed fiscal 1985	3	3	0	0	0
Pending September 30, 1985	1	1	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1985[1]

Action taken	Total cases closed
	3
Board would assert jurisdiction	2
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	0
Withdrawn	1

[1] See Glossary of terms for definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1985; and Age of Cases Pending Decision, September 30, 1985

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	44
2. Complaint to close of hearing	112
3. Close of hearing to issuance of administrative law judge's decision	126
4. Administrative law judge's decision to issuance of Board decision	273
5. Filing of charge to issuance of Board decision	720
B. Age[1] of cases pending administrative law judge's decision, September 30, 1985	381
C. Age[1] of cases pending Board decision, September 30, 1985	777
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	8
2. Notice of hearing to close of hearing	13
3. Close of hearing to—	
Board decision issued	190
Regional Director's decision issued	22
4. Filing of petition to—	
Board decision issued	268
Regional Director's decision issued	44
B. Age[2] of cases pending Board decision, September 30, 1985	236
C. Age[2] of cases pending Regional Director's decision, September 30, 1985	34

[1] From filing of charge.
[2] From filing of petition.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1985

I. Applications for fees and expenses before the NLRB:	
A. Filed with Board	20
B. Hearings held	3
C. Awards ruled on:	
1. By administrative law judges:	
Granting	5
Denying	27
2. By Board:	
Granting	2
Denying	24
D. Amount of fees and expenses in cases ruled on by Board:	
Claimed	$347,039
Recovered	$69,153
II. Applications for fees and expenses before the circuit courts of appeals:	
A. Awards ruled on:	
Granting	1
Denying	11
B. Amounts of fees and expenses recovered pursuant to court award	$13,264

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